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NO. 82-1253

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

HERMAN S. SOLEM, WARDEN,
SOUTH DAKOTA STATE PENITENTIARY; and
MARK V. MEIERHENRY, ATTORNEY GENERAL,
STATE OF SOUTH DAKOTA,

Petitioners,

v.

JOHN BARTLETT,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF OF PETITIONERS

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QUESTION PRESENTED

Whether the opening of land within the original Cheyenne River Reservation to settlement by non-Indians through the Act of May 29, 1908, 35 Stat. 460, diminished the original reservation so as to confer criminal jurisdiction within the opened area upon the State of South Dakota?

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The decision of the United States District Court for the District of South Dakota is unreported. That decision, dated April 19, 1982, appears in the Appendix to Petition for Certiorari [hereinafter "AP"] at pp. A1-A8. The opinion of the United States Court of Appeals for the Eighth Circuit is reported at the following citation: Bartlett v. Solem, 691 F.2d 420 (8th Cir. 1982) (en banc).

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HERMAN S. SOLEM, WARDEN,
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JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on

October 27, 1982. The Petition for Writ of Certiorari was filed on January 25, 1983. The Petition for Writ of Certiorari was granted on May 31, 1983. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The term "Indian Country" is defined in 18 U.S.C. § 1151. That section provides as follows:

> Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country," as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

The western portion of the original Cheyenne River Reservation was opened to settlement by non-Indians by the Act of May 29, 1908, 35 Stat.

460. The 1908 Surplus Lands Act was amended by the Act of February 17, 1910, 36 Stat. 196.[1]

STATEMENT OF THE CASE

A. STATEMENT OF FACTS

On April 24, 1979, Bartlett pleaded guilty to attempted rape in a South Dakota state court in Dewey County, South Dakota. Bartlett is an enrolled member of the Cheyenne River Sioux Tribe. The crime took place in Eagle Butte, Dewey County, South Dakota. The exact location of the crime is as follows: Lot 12, Block 16 of the Milwaukee Land Company's First Addition to the town now City of Eagle Butte, South Dakota, located in the NW 1/4, SW 1/4 of Section 17, Township 12 North, Range 24 East of the Black

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[1] Hereinafter the Act of May 29, 1908, will be referred to as either "1908 Surplus Lands Act," "1908 Act" or "Act." The 1908 Act is set forth in the Appendix (Appendix A, pp. A1-A16). The Act of February 17, 1910, is also set forth in the Appendix (Appendix B, A17-A20).

Hills Meridian, Dewey County, South Dakota. This land was patented to T.C. Sherman on November 17, 1910, by the United States government and now is non-trust property owned by Vernon Anderson, a non-Indian. This land is within the confines of the original Cheyenne River Reservation created by the Act of March 2, 1889, 25 Stat. 888; however, the land now lies outside the original Cheyenne River Reservation because that area was opened to settlement by the 1908 Surplus Lands Act.

B. PROCEDURAL HISTORY

On February 9, 1982, Bartlett filed a petition for a Writ of Habeas Corpus in United States District Court for the District of South Dakota. AP, A32-A42.

In his petition, Bartlett claimed that his plea of guilty in state court to an attempted rape charge was invalid because he committed the crime in "Indian Country," as that term is defined in 18 U.S.C. § 1151. According to Bartlett, because

the crime was committed in Indian Country, the state court system had no jurisdiction over him or the crime he committed. The United States District Court for the District of South Dakota considered the matter on the written record. The District Court's Memorandum Opinion, dated April 19, 1982, granted Bartlett's Petition. AP, A1-A8. The Court concluded that the 1908 Surplus Lands Act did not diminish the boundaries of the original Cheyenne River Reservation and that the state lacked criminal jurisdiction over the location of the crime committed by Bartlett.[2]

Bartlett's original action in the United States District Court for the District of South Dakota was brought under the provisions of 28 U.S.C. §

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[2] The process of redrawing the boundaries of an Indian reservation which has been opened to settlement has been described as "termination," "diminishment," and "disestablishment." These terms are interchangeable. See, United States v. Dupris, 612 F.2d 319, 320 n. 3 (8th Cir. 1979); State v. Janis, 317 N.W.2d 133, 134 n. 1 (S.D. 1982). Throughout this Petition, the process will be referred to as "diminishment."

2254. The District Court had jurisdiction under the provisions of 28 U.S.C. § 2254. Notice of Appeal to the United States Court of Appeals for the Eighth Circuit was filed on May 11, 1982. The Notice of Appeal was filed within the thirty (30) days allowed by Rule 4(a)(1) of the Federal Rules of Appellate Procedure.

On June 30, 1982, the State filed a Petition Suggesting Hearing En Banc before the Court of Appeals. On July 30, 1982, the petition was granted. An en banc argument before the Court of Appeals was held on September 15, 1982, in St. Paul, Minnesota. The decision by the Court of Appeals, dated October 27, 1982, affirmed the decision of the District Court.[3] AP, A9-A12.

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[3] Also raised as an issue in the Court of Appeals was whether the crime committed by Bartlett occurred within a "dependent Indian community," as that term is used in 18 U.S.C. § 1151. Because the lower courts have determined that the boundaries of the original reservation have not been diminished, the merits of this issue have not been developed or discussed in the courts below. See, United States v. Dupris, 612 F.2d 319, 341 (8th Cir. 1979) (McMillian J., dissenting).

The Court of Appeals had jurisdiction of the appeal under the provisions of 28 U.S.C. § 1291.

Petitioners Solem and Meierhenry filed a Petition for Writ of Certiorari on January 25, 1983.[4] This Petition sought review of the decision by the Eighth Circuit Court of Appeals. The Petition for Writ of Certiorari was granted on May 31, 1983.

SUMMARY OF ARGUMENT

The question presented in this appeal can be answered through the proper application of the guidelines set by this Court in DeCoteau v. District County Court, 420 U.S. 425 (1974) and Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977). Foremost among these guidelines are: (1) that the Court must first look to the face of the Act in question to determine whether the language indicates a congressional intent to diminish; and

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[4] Petitioners Solem and Meierhenry represent the State of South Dakota and will hereinafter be referred to by the term "State."

(2) that in order to ascertain congressional intent, the Court can look beyond the face of the Act to the circumstances surrounding the passage of the Act and the legislative history of the Act for evidence of an intent to diminish.

The intent of Congress is clear upon the application of these simple principles to the 1908 Surplus Lands Act, which opened the original Cheyenne River Reservation to settlement: the boundaries of the original reservation were to be redrawn following the passage of the Act, with the result being a compact, yet diminished, reservation.

The Act itself includes several specific examples of an intent to diminish. In section 2, the description of the land not opened to settlement as the "reservation thus diminished," is a clear indication of such intent. The granting of certain sections of land for school use, pursuant to the Enabling Act, which is found in section 7, can only mean that the 1908 Act was intended to

diminish the original reservation boundaries. The return of land, pursuant to section 9, to the "public domain," further evidences an intent to diminish. Finally, the subsequent amendment of section 8 to prohibit intoxicants in the opened area also clearly evidences an intent to diminish.

Review of the other facts, such as the historical context of the enactment of the Act, the legislative history of the Act, and the subsequent jurisdictional treatment of the area in question, all support the intent to diminish found on the face of the Act itself. Especially useful in this review are the notes and report of Inspector James McLaughlin, the Indian agent who discussed the opening of the original reservation with both the Standing Rock and Cheyenne River Sioux Tribes prior to the enactment of the 1908 Surplus Lands Act.

All of these pieces of evidence point unequivocally to an intent by Congress to diminish the original Cheyenne River Reservation with the

passage of the 1908 Act. This conclusion is reached following an analysis consistent with this Court's pronouncements in the diminishment area. Throughout its analysis of this question, however, the United States Court of Appeals for the Eighth Circuit has either overlooked or ignored these clear declarations of an intent to diminish. United States ex rel Condon v. Erickson, 478 F.2d 684 (8th Cir. 1973); United States v. Dupris, 612 F.2d 319 (8th Cir. 1979); Bartlett v. Solem, 691 F.2d 420 (8th Cir. 1982) (en banc).

This appeal presents the Court with an opportunity to correct the Court of Appeals' misapplication of diminishment principles that have been clearly enunciated by this Court. An analysis of the 1908 Surplus Lands Act which is consistent with this Court's decisions in Rosebud Sioux Tribe, supra and DeCoteau, supra, supports the State's contention that the Act diminished the boundaries of the original Cheyenne River Reservation, and that the State

has jurisdiction over the crime committed by Bartlett within the area so diminished.[5]

ARGUMENTS AND AUTHORITIES

THE STATE OF SOUTH DAKOTA HAS JURISDICTION OVER CRIMES COMMITTED ON UNALLOTTED LAND OWNED BY NON-INDIANS IN THE AREA OF THE ORIGINAL CHEYENNE RIVER RESERVATION OPENED BY THE 1908 SURPLUS LANDS ACT.

The United States Court of Appeals for the Eighth Circuit, with Theodore McMillian and Richard S. Arnold, Circuit Judges, dissenting, concluded that Congress did not intend to diminish the original Cheyenne River Reservation when it enacted the 1908 Surplus Lands Act. Bartlett

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[5] The State acknowledges that the federal government and the tribes have exclusive jurisdiction over Indian activities on those portions of the original reservation which were restored to reservation status pursuant to 25 U.S.C. § 467, and on Indian allotments presently held in trust. 18 U.S.C. § 1151. Further, the State does not question the continued extension of federal services to tribal members residing within the area in question. see, Rosebud Sioux Tribe v. Kneip, 430 U.S. 584, 615-616 n. 48 (1977).

v. Solem, 691 F.2d 420, 421 (8th Cir. 1982) (en banc). In reaching this conclusion, the court stated:

> DeCoteau and Rosebud were thoroughly analyzed by this Court in United States v. Dupris and United States v. Long Elk. We conclude that the views expressed by this Court in Erickson, Long Elk and Dupris are consistent with the opinions of the Supreme Court in DeCoteau and Rosebud.[6]

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[6] The decisions cited by the Court of Appeals within this quotation are as follows:

(1) DeCoteau v. District County Court, 420 U.S. 425 (1974);

(2) Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977);

(3) United States v. Dupris, 453 F.Supp. 1171 (D.S.D. 1978), rev'd, 612 F.2d 319 (8th Cir. 1979), vacated and remanded, 446 U.S. 980 (1980), prosecution dismissed, 664 F.2d 169 (8th Cir. 1981);

(4) United States v. Long Elk, 565 F.2d 1043 (8th Cir. 1977); and

(5) United States ex rel. Condon v. Erickson, 478 F.2d 684 (8th Cir. 1973) [hereinafter "Erickson"].

Bartlett, supra at 421 (footnote added.)

The following argument by the State clearly illustrates the clear error in the Court of Appeals' analysis with respect to the interpretation of the 1908 Surplus Lands Act. The argument also highlights the fact that the Court of Appeals totally ignored the dictates of this Court, as set forth in DeCoteau and Rosebud Sioux Tribe.

THE DIMINISHMENT ANALYSIS

This Court has, on many occasions, had an opportunity to determine whether an Act of Congress was intended to diminish the original boundaries of an Indian reservation. The analysis in such questions was originally set forth by this Court in Seymour v. Superintendent, 368 U.S. 351 (1962). This analysis has been expanded and refined in subsequent decisions of the Court. Mattz v. Arnett, 412 U.S. 481 (1973); Decoteau, supra; and Rosebud Sioux Tribe, supra. see, Puyallup Tribe v. Department of

Game of State of Washington, 433 U.S. 165, 174 n. 11 (1977); State v. Janis, 317 N.W.2d 133, 135-137 (S.D. 1982).

In Rosebud Sioux Tribe, the most recent diminishment decision, this Court set forth the following guidelines for analysis and canons of construction:

> (1) Congressional intent is controlling;
>
> (2) Doubtful or ambiguous expressions are to be resolved in favor of the Indians;
>
> (3) Opening a reservation for settlement does not necessarily mean that the opened area loses its reservation status;
>
> (4) The canon of construction requiring that doubtful expressions are to be construed in favor of the Indians does not require a determination that reservation status survives congressionally manifested intent to the contrary; and
>
> (5) In order to ascertain congressional intent, a court is obliged to look at the Act in question, the surrounding circumstances and the legislative history.

Rosebud Sioux Tribe, 430 U.S. at 586-587. see also, Rosebud Sioux Tribe v. Kneip, 521 F.2d 87,

91 (8th Cir. 1975) (inquiry into the diminishment issue "may encompass all materials reasonably pertinent to the legislation"); DeCoteau, 420 U.S. at 447 ("A canon of construction is not a license to disregard clear expressions of tribal and congressional intent.")

The following argument will analyze the 1908 Surplus Lands Act, which opened the original Cheyenne River Reservation to settlement by non-Indians, using the standards set forth in the Rosebud Sioux Tribe decision. Such analysis leaves no doubt that the 1908 Surplus Lands Act was intended to diminish the original Cheyenne River Reservation. The first step in this analysis is a review of the language in the Act itself.

A. The 1908 Surplus Lands Act.

The original Cheyenne River Reservation was established by the Act of March 2, 1889, 25 Stat. 888. In 1908, following discussions between the federal government, through experienced Indian

Agent James McLaughlin and the members of the Cheyenne River and Standing Rock Sioux Tribes, Congress enacted the 1908 Surplus Lands Act. This statute directed the Secretary of Interior to "sell and dispose of" the unallotted lands in both the Cheyenne River and Standing Rock Reservations.[7] In 1910, pursuant to the provisions of

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[7] The Standing Rock Reservation is located within Corson County, South Dakota and Sioux County, North Dakota. Because of the location of the offense committed by Bartlett, the jurisdictional status of the Standing Rock Reservation is not directly at question in this action.

The United States Court of Appeals for the Eighth Circuit has decided that Congress did not intend to diminish the eastern portion of the Standing Rock Reservation, which was opened to settlement by the Act of February 14, 1913, 37 Stat. 675. United States v. Long Elk, 565 F.2d 1032 (8th Cir. 1977). The jurisdictional status of the eastern portion of Standing Rock Reservation is also not at question in this action.

The jurisdictional status of the portion of the Standing Rock Reservation opened by the 1908 Surplus Lands Act will no doubt be directly affected by the decision in this case. The decision in this appeal will also have a significant impact upon the previous determinations made by

the Act, the western portion of both reservations and a strip along both sides of the east-west boundary between the reservations were opened to settlement by non-Indians. Act of May 29, 1908, 35 Stat. 460; Presidential Proclamation of August 19, 1909, 36 Stat. 2500.

The following map illustrates the portions of Corson, Dewey and Ziebach counties, South

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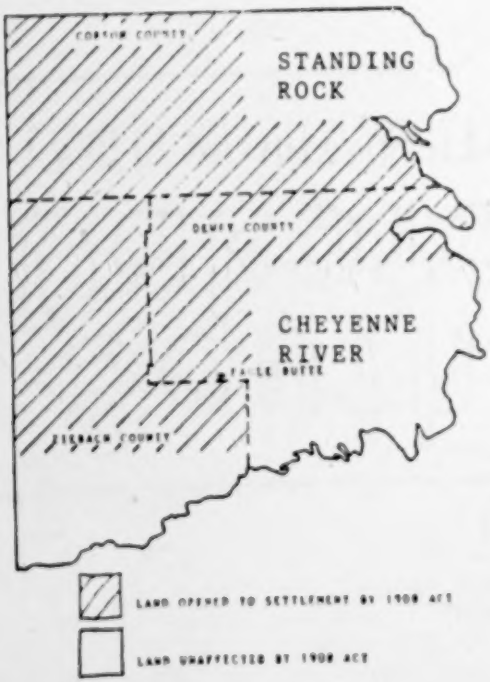
the Court of Appeals in Long Elk, supra, and in Lower Brule Sioux Tribe v. South Dakota, 540 F.Supp. 276 (D.S.D. 1982), aff'd in part and rev'd and remanded in part, ___ F.2d ___ (8th Cir. June 27, 1983). In both of these cases, one involving the eastern portion of the Standing Rock Reservation and the other dealing with lands within the original Lower Brule Reservation taken pursuant to the Flood Control Act of 1944, 16 U.S.C. § 460d, the Court of Appeals decided diminishment issues, relying upon the erroneous analysis of such questions embodied in its decision in United States v. Dupris, supra, and United States ex rel. Condon v. Erickson, supra. This faulty diminishment analysis was affirmed by the Court of Appeals in the decision below. Bartlett, supra at 421.

Dakota, which were opened to settlement by the 1908 Surplus Lands Act.[8]



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[8] Some of the area opened to settlement by the 1908 Act is trust land owned by Indians, and is therefore subject to tribal and/or federal jurisdiction. see, note 5, supra. While a finding of diminishment will necessarily create "checkerboard jurisdiction," that fact is neither dispostive nor controlling on whether Congress intended to diminish the original reservation. see, DeCoteau, supra; Rosebud Sioux Tribe, supra; Washington v. Yakima Indian Nation, 439 U.S. 463, 499-502 (1979).

Four separate sections of the 1908 Surplus Lands Act itself specifically and unequivocally illustrate the intent of Congress to diminish the original Cheyenne River Reservation when it enacted the 1908 Surplus Lands Act.

1. Section 2: Reservation thus diminished.

Language in section 2 of the 1908 Surplus Lands Act specifically describes the land not opened to settlement as the "reservation thus diminished." Appendix A; p. A5. Compare, AP, p. A65 (language in the 1910 Rosebud Act describing the land not opened to non-Indian settlement as "the diminished reservation"); and AP, p. A79 (language in the 1910 Pine Ridge Act describing the land not opened to non-Indian settlement as "the diminished reservation.")

This language is explicit evidence of an intent to diminish the original boundaries of the Cheyenne River Reservation. See, DeCoteau, 420 U.S. at 446-447; Rosebud Sioux Tribe v. Kneip,

521 F.2d 87, 99 (8th Cir. 1975); United States ex rel. Cook v. Parkinson, 525 F.2d 120, 123 (8th Cir. 1975), cert. denied, 439 U.S. 982 (1977). See also, Rosebud Sioux Tribe, 430 U.S. at 613-614 (a similar provision in the 1910 Rosebud Act is highly persuasive evidence of diminishment).

2. Section 7: School lands.

Section 7 of the 1908 Surplus Lands Act reserves sections 16 and 36 of each township in the opened area and grants them to the states in which they are located "for the use of common schools." Appendix A, pp. A12-A13. These are the same numbered sections that were historically reserved for and granted to the states for school purposes. see, Act of February 22, 1889, 25 Stat. 676 (South Dakota Enabling Act).

This Court reviewed similar language in the acts which opened the Rosebud Reservation in Rosebud Sioux Tribe, supra. AP, pp. A74-A75. After such review, this Court concluded that this

language is strong evidence of diminishment. Rosebud Sioux Tribe, 430 U.S. at 599-601. As in the 1904 Rosebud Act, Congress included section 7 of the Act in question in order to implement a grant to the State of South Dakota which was made under the Enabling Act, but which was deferred until the reservation was extinguished and the land was restored to the public domain. see, AP, pp. A51-A52 (similar school lands section in 1904 Rosebud Act).

In part, section 10 of the Enabling Act, Act of February 22, 1889, 25 Stat. 676, states (emphasis added):

> [N]or shall any lands embraced in Indian, military or other reservations of any character, be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of, the public domain.

The 1908 Surplus Lands Act, therefore, provided payment for sections which had been granted to

the State of South Dakota pursuant to the Enabling Act. Because the school land dealt with in section 7 of the Act was part of an Indian reservation at the time South Dakota became a state, under the explicit terms of the Enabling Act, the reservation status of the land must have been extinguished and the land restored to the public domain before the grant of school land found in section 7 could have taken place. In short, the grant of school lands found in section 7 is necessary only if the reservation status of the lands so granted was extinguished.

3. 1910 Amendment: Prohibition of intoxicants.

The Act of February 17, 1910, 36 Stat. 196, amended section 8 of the 1908 Surplus Lands Act. By these amendments, the introduction of intoxicating beverages into the area opened by the 1908 Surplus Lands Act was prohibited. Appendix B, pp. A18-A19. If the area of the original reservation opened by the 1908 Act was still part of the

original reservation, this 1910 legislation was unnecessary. The area would have still been "Indian country," and selling intoxicants in "Indian country" was already prohibited. see, Act of July 23, 1892, 27 Stat. 260.

An identical prohibition provision is found in the 1910 Rosebud Act, which opened the Rosebud Reservation to settlement. AP, p. A76. This Court found this provision to be an expression of a congressional intent to diminish the boundaries of the original Rosebud Reservation. As the Court stated:

> [T]he most reasonable inference from the inclusion of this provision [concerning prohibition of intoxicants on surplus lands] is that Congress was aware that the opened, unallotted areas would henceforth not be "Indian country," because not in the reservation.

Rosebud Sioux Tribe, 430 U.S. at 613. The same considerations which led this Court to reach this conclusion in regard to the 1910 Rosebud Act are present in regard to an identical provision in the 1908 Surplus Lands Act.

4. Section 9: Public Domain.

Language in section 9 of the 1908 Surplus Lands Act explicitly returns the opened lands in the original Cheyenne River Reservation to the public domain. Appendix A, p. A16. Restoration of land to the public domain has been recognized by this Court as being synonymous with diminishment. Rosebud Sioux Tribe, 430 U.S. at 589 n. 5; DeCoteau, 420 U.S. at 426-427, 446, 448-449; Seymour v. Superintendent, 368 U.S. at 358.

5. Summary: A clear intent to diminish.

The foregoing arguments set forth the explicit language of the 1908 Surplus Lands Act which evidences a clear congressional intent to diminish the portions of the original Cheyenne River Reservation opened to settlement by the 1908 Act. The Court of Appeals, however, in reviewing the issue presented in this appeal, has either disregarded, downplayed, or ignored this explicit statutory language. United States ex rel Condon

v. Erickson, 478 F.2d 684 (8th Cir. 1973); United States v. Dupris, 612 F.2d 319 (8th Cir. 1979); Bartlett v. Solem, 691 F.2d 421 (8th Cir. 1982).

On the other hand, the courts which have concluded that the 1908 Act diminished the boundaries of the original reservation, have found the statutory language in the 1908 Surplus Lands Act to be strong evidence of an intent to diminish. Stankey v. Waddell, 256 N.W.2d 117, 120-122 (S.D. 1977); United States v. Juvenile, 453 F.Supp. 1171, 1188-1195 (D.S.D. 1979). see also, United States v. Dupris, 612 F.2d 319, 328-335 (McMillian, J., dissenting). see generally, State v. Janis, 317 N.W.2d 133 (S.D. 1982).

The 1908 Surplus Lands Act, on its face evidences a clear congressional intent to diminish the original Cheyenne River Reservation. A review of the other factors set forth in Rosebud Sioux Tribe, DeCoteau, and Seymour--the legislative history of the Act, the historical and

surrounding circumstances of the promulgation of the Act, and the subsequent jurisdictional treatment of the geographical area in question-- would therefore be unnecessary. However, when these factors are also reviewed, the intent of the language found in the 1908 Surplus Lands Act supports no other intent save diminishment. The language of the Act reflects the unambiguous intent to diminish the original Cheyenne River Reservation, and is supported by a review of these other factors.

B. The Historical Setting.

The 1908 Surplus Lands Act is one of a series of Acts of Congress which opened Indian reservation land to settlement by non-Indians. The Acts within this series are often referred to as Surplus Lands Acts. In addition to the Act in question, several other Acts opened the other Sioux Indian Reservations in South Dakota to settlement by non-Indians. These Surplus Lands

Acts are specific acts which effectuated the general policy guidelines set forth in the General Allotment Act of 1887, 24 Stat. 388, commonly referred to as the Dawes Act. Portions of both the original Rosebud and original Pine Ridge Reservations in South Dakota were opened to settlement by specific Surplus Lands Acts. The Rosebud Reservation was opened by the following series of acts: Act of April 23, 1904, 33 Stat. 254; Act of March 2, 1907, 34 Stat. 1230; and Act of May 30, 1910, 36 Stat. 448. The Pine Ridge Reservation was opened by the Act of May 27, 1910, 36 Stat. 440. Earlier, the Lake Traverse Reservation was opened by the Act of March 3, 1891, 26 Stat. 989. To fully understand the historical context in which the 1908 Surplus Lands Act was enacted, a short review of the changing Indian policy of that time is necessary.

1. Familiar forces.

The Act of April 29, 1868, 15 Stat. 635, created the Great Sioux Reservation in what is

now western South Dakota. Soon thereafter, "familiar forces" began to exert pressures on the land and on the policymakers, making the continued vitality of large reservations questionable. DeCoteau, 420 U.S. at 431-435. The last part of the nineteenth century saw these "forces" exerting ever-increasing pressure. This time period saw rapid settlement and development in the West. This growth led to a need for federal legislation providing for the acquisition of Indian land and resources. F. Cohen, Handbook of Federal Indian Law at 128 (1982 ed.) [hereinafter referred to as Cohen]. One response to these pressures was the passage of the Dawes Act.

The pressure of these "familiar forces" was great:

> Eastern philanthropists wanted to civilize the Indian; western settlers wanted Indian land. The expanding white civilization continued to break down the reservations, and the federal government could not or would not prevent it. The pressure for Indian land was a powerful motivating force for the allotment policy. Private land speculators,

> timber interests, and railroads took part in its development. It was hoped that an added benefit of allotment would be relief from the expensive burden of Indian appropriations.

Cohen, supra at 132 (footnote omitted). In describing the Allotment Period of American Indian history, one commentator has distinguished the Dawes Act as the major feature of that period. The description of the period continues with the following conclusion:

> Congress contemplated forcing the Indians to accept its allotment policy with provisions that contemplated the ultimate dissolution of the Indian tribe and its reservation.

Price and Clinton, Readings, Notes and Cases: Law and the American Indian at 78 (Michie Company, 2d Ed. 1981). The wisdom of this policy is not at issue in this appeal. As Justice Rehnquist noted: "Some might wish [Congress and the tribe] had spoken differently, but we cannot remake history" DeCoteau, 420 U.S. at 449.

A result of the clear shift by the federal government to individual allotments was the creation of smaller reservations and the opening of large areas of former reservation land to settlement by non-Indians. The Cheyenne River Reservation was established by the Act of March 2, 1889, 25 Stat. 888. That reservation encompassed the entire area of what is now Ziebach and Dewey Counties in South Dakota.

Even the creation of smaller reservations did not satisfy the forces exerting pressure for the opening of unused reservation land to settlement. These ever-stronger forces militated against large, unwieldy Indian reservations set on land being coveted by non-Indian settlers seeking an opportunity along the vanishing frontier. Surplus Lands Acts became commonplace during this time. Land not needed to provide allotments for tribal members was considered "surplus" by the non-Indian settlers. The Surplus Lands Acts

that became law during the period from 1885 through 1915 were a further response to settlement pressures of the time.

2. Inspector McLaughlin and the Sioux Indians of South Dakota.

The original Cheyenne River Reservation created by the Act of March 2, 1889, which created the western South Dakota reservations, included nearly 2.9 million acres. Even as these lands were set aside for the Cheyenne River Sioux Tribe, the forces aimed at opening up the large tracts of unsettled and unallotted reservation lands were already in motion. Section 5 of the Dawes Act and Section 12 of the 1889 Act included nearly identical provisions allowing for the negotiation between the tribes and the federal government for the sale of unallotted tribal lands. Pursuant to these provisions, the negotiations process with the Cheyenne River Sioux Tribe, which led to the passage of the 1908 Surplus Lands Act in question in this appeal, was begun.

On December 9, 1907, Senator Gamble of South Dakota, the primary sponsor of the federal legislation which led to the diminishment of portions of the Rosebud and Pine Ridge Reservations, introduced S. 1385. This bill authorized "the sale and disposition of a portion of the surplus unallotted lands of the Cheyenne River and Standing Rock Reservations." 42 Cong. Rec. 207 (1907).

The actual duty of negotiating the "sale and disposition" of the Indian lands was conferred upon Inspector James McLaughlin. Inspector McLaughlin had also negotiated the sale of reservation land on the Rosebud and Pine Ridge Reservations. McLaughlin met with members of the Standing Rock Sioux Tribe in Fort Yates, North Dakota, early in 1908. He then travelled to the Cheyenne River Agency in South Dakota for discussions with members of the Cheyenne River Sioux Tribe in regard to Senator Gamble's proposed legislation to open the reservation to

non-Indian settlement. These discussions began on March 16, 1908. The detailed minutes of these meetings are found in both the Senate and House Reports that accompany S. 1385. S. Rep. No. 439, 60th Cong., 1st Sess. (1908); H.R. Rep. No. 1539, 60th Cong., 1st Sess. (1908).[9] see, Appendix C, pp. A51-A123 [Standing Rock minutes], A123-A162 [Cheyenne River minutes]. A detailed study of the contents of these minutes is set out in the next section.

It is significant to note that the Court of Appeals ignored the historical context surrounding the passage of the 1908 Surplus Lands Act. Erickson, supra at 688. A comparison of the language and legislative history of the 1908 Act

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[9] These reports are essentially identical. For convenience, House Report No. 1539 is set out in the Appendix (Appendix C, pp. A21-A162). References to this Report will be made by using the phrase "House Report," followed by the appropriate page number from the Report, and, in parenthesis, the appropriate page number from the Appendix.

with that of the acts which opened both the Rosebud and Pine Ridge Reservations reveals that there are no significant differences in the statutes. However, as important as the similarities in the language contained within these acts are to the State's argument, the other historical similarities are also significant. The sponsors of the acts in Congress were the same. see, Dupris, supra at 326 n. 4 (McMillian, J., dissenting). Moreover, Inspector McLaughlin dealt with not only the Cheyenne River and Standing Rock Sioux Tribes, but also with the Indians on both the Rosebud Reservation and the Pine Ridge Reservation prior to the opening of those reservations to settlement by non-Indians. see, Dupris, supra at 326 n. 5 (McMillian, J., dissenting).

These similarities are a strong indication of the identity of purpose among the Acts. The decisions of this Court note the similarities

between the Acts opening reservations to settlement, and recognize these similarities as highly persuasive evidence of diminishment. see, Rosebud Sioux Tribe, 430 U.S. at 608-609, 612-613; DeCoteau, 420 U.S. at 446; United States ex rel. Cook v. Parkinson, supra at 123. see also, AP, p. A31, which is a map of the State of South Dakota illustrating the status of the reservations in the State opened to non-Indian settlement in the late 1800's and early 1900's, including those reservations in western South Dakota where Inspector McLaughlin was involved in discussion with the respective tribes.

The opening of the western South Dakota Indian reservations involved two primary actors. Senator Gamble introduced the legislation in Congress which actually led to the opening of the Rosebud, Pine Ridge, Standing Rock and Cheyenne River Reservations. This legislation was enacted in 1904, 1907, 1908 and 1910. Prior

to the enactment of each of these pieces of legislation, Inspector McLaughlin held discussions with the respective tribes. The courts have held that the boundaries of the Rosebud and Pine Ridge reservations were diminished by this congressional action. Rosebud Sioux Tribe, supra; United States ex rel. Cook v. Parkinson, supra. The Court of Appeals, however, has chosen to ignore the strong historical evidence of an intent to diminish that is contained within the passage of the other Acts of Congress which opened other Sioux Indian Reservations in South Dakota to settlement by non-Indians. The inferences gained by a review of the historical setting in which the 1908 Surplus Lands Act was enacted clearly supports the intent to diminish found on the face of the Act itself. Any other result would create an unintended and unexplainable anomaly in the historical setting surrounding the opening of the Indian reservations in western South Dakota.

C. Legislative History.

The reports of Inspector James McLaughlin, including the minutes of his discussions with the Standing Rock and Cheyenne River Sioux Tribes in regard to the opening of the lands by the 1908 Surplus Lands Act, illustrate the contemporaneous interpretation of the words of the Act as those words were understood by the parties to the discussions. These notes and reports became an integral part of the legislative history through their inclusion in the House and Senate Reports which accompanied the 1908 Surplus Lands Act out of committee. The Court of Appeals used this material sparingly in Erickson, Dupris and Bartlett. However, because of the guidelines set by Rosebud Sioux Tribe and DeCoteau, these notes and reports must be carefully scrutinized in order to discern possible evidence of an intent to diminish. The various courts which have found,

subsequent to the decision in Rosebud Sioux Tribe, that the original reservation was diminished by the 1908 Surplus Lands Act, have made such studies, and have relied upon the evidence of an intent to diminish which is found in these notes and reports. Stankey v. Waddell, supra at 122-126; State v. Janis, supra at 137; United States v. Juvenile, supra at 1176-1188; United States v. Dupris, supra at 329-331 (McMillian, J., dissenting).

1. Inspector McLaughlin at the Cheyenne River Agency: The Minutes.

On March 16, 1908, Inspector McLaughlin made a presentation at the Cheyenne River Agency.[10] This presentation began with a description of the proposed legislation involving surplus land on the reservation:

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[10] On March 9, 1908, McLaughlin held a meeting in Fort Yates, North Dakota, with the members of the Standing Rock Sioux Tribe concerning the 1908 Surplus Lands Act. The method and substance of the discussions of Inspector McLaughlin

> There was a bill introduced in the U.S. Senate by Senator Gamble, of South Dakota, on December 9 last, a little over three months ago, which provides for the opening of that portion of your reservation embraced in Schnasse County, and another bill was introduced in the House of Representatives by Congressman Hall, of South Dakota, on the 24th of last month, three weeks ago today, which latter bill provides for the opening of all the surplus lands of the Cheyenne River Reservation. . . .

House Report at 21 (A127). McLaughlin then counseled careful consideration of the matter by the Tribe:

> Agree among yourselves upon some compromise measure between the two bills which may receive the approval of the Department and be acceptable to Congress.
>
> Determine upon how much, and what portion, of your reservation you are willing to relinquish;

---

with the members of the Standing Rock Sioux Tribe immediately prior to his discussions with the Cheyenne River Sioux Tribe, and the evidence of diminishment shown by these discussions are clearly within this Court's scope of review in this matter. see, Rosebud Sioux Tribe v. Kneip, 521 F.2d 87, 91 (8th Cir. 1975). The Standing Rock minutes are set forth in the Appendix. Appendix C, pp. A51-A123.

House Report at 22 (A131) (emphasis added).

The council adjourned, and when it reconvened, Inspector McLaughlin again discussed the bills introduced in Congress concerning the Standing Rock and Cheyenne River Reservations. This discussion demonstrates McLaughlin's belief that the negotiations with the tribes would lead to a compact reservation with redrawn boundaries:

> The bills introduced for Standing Rock and Cheyenne River reservations by Congressmen from the respective States in which the lands are situated, providing for opening all surplus land of the reservations, will doubtless become a law in a modified form. After I explained the matter to the Standing Rock people very fully they saw the wisdom of meeting the wishes of Congress in a very reasonable manner, by which I am quite confident that they will have a diminished reservation created, which will remain so for many years, and it will enable them to have allotments for the children born to them for many years to come. It is my desire that you meet the question in the same manner as Standing Rock. You are one people; you are of the same blood; you live under the same treaty, and I hope you will meet the matter similarly. I am quite confident that when I submit my Standing Rock council minutes to the Secretary of the Interior

> that he and the Commissioner will be very much pleased, and submit it to Congress with recommendation that it be accepted, which would leave the Indians a permanent diminished reservation. As many of the Standing Rock Indians have taken allotments in the portion that will be opened it will leave them about 500,000 acres of surplus land on the diminished reservation; and on this reservation, juding from what I have heard the Indians saying to the alloting agent to-day, in desiring lands in the parts proposed to be opened, that you will have fully a million acres of vacant lands within the lines I have suggested.
>
> My friends, you will be perfectly safe in allowing the Secretary of Interior and the Commissioner of Indian Affairs to determine the lines for you.

House Report at 24-25 (A142-A144) (emphasis added).

Further excerpts from the transcripts of Inspector McLaughlin's discussions with the Cheyenne River counsel are significant in determining the intent of Congress when it enacted the 1908 Surplus Lands Act. One of these excerpts deals with Inspector McLaughlin's discussion of

the "familiar forces" pressing on the surplus reservation land:

> I know the sentiment of the Indians regarding their reservations and of the desire to hold them intact, which is only natural, but for the Indians to hold large tracts of unused land is now impossible, my friends, and you must bring yourselves to accept the inevitable, and rely upon the Department to obtain for you reasonable compensation for the lands you do not need.
>
> Large reservations were possible in the past, but there was then what was known as frontier.
>
> That was when the principal portion of the population of this country lived east of the Mississippi River, but the tide of emigration from European countries to the United States forced home seekers constantly westward from the east and later on eastward from the west until the two waves met and obliterated the so-called frontier.
>
> There is no more frontier where settlers may find homes readily, and the steadily increasing population of the country demands all available land possible for the incoming settlers. The demand for land for home seekers is now so great that Senators and Congressmen are being constantly urged by their constituents to open additional lands to settlement, and the sentiment in Congress to open Indian reservations

> has been growing stronger each succeeding year from some years past, until the sentiment now prevails that Indians may only retain what land they actually need and can make proper use of.
>
> I was for many years in favor of leaving the boundaries of Indian reservations undisturbed; but results of the system have caused me to change my mind relative to same, and I now believe, even if such were possible, that large reservations for Indians, much of which is not occupied by them, is not for the best interests of the Indian occupants.
>
> I now believe that it will be manifestly better for the Indians to have their surplus lands opened to settlement, as it brings in white settlers among them, from whom the Indians may more readily acquire the white man's civilization and industrious habits, and it insures a home market for all products raised by the Indians. . . .
>
> You have a very large reservation, certainly much greater than you need and much greater than you will be privileged to retain. . . .

House Report at 23 (A132-A135) (emphasis added.)

Inspector McLaughlin's notes also indicate that a discussion took place involving the impact

that this Court's decision in Lone Wolf v. Hitchcock, 187 U.S. 553 (1903), had on the negotiation process between the federal government and the various Indian tribes. Following discussion of the holding from that decision, Inspector McLaughlin made the following observation:

> This is the situation as to the power of Congress to open the surplus lands of Indian reservations, but the Secretary of the Interior and Commissioner of Indian Affairs desire that Indians be consulted and their views ascertained before legislation is concluded for the opening of their reservations, and this is why I am now here, having been sent to confer with you relative to the proposed legislation affecting your reservation.

House Report at 22 (A129). James Crow Feather, a tribal member attending the discussion at the Cheyenne River Agency, later referred to the Lone Wolf decision in his comments:

> You mentioned Lone Wolf's case in your address here to-day. I wish to say something regarding him. I understand that Lone Wolf refused to sell his land or cede it to the Government, but the Government took it. The way I look at

> that, the Government did right in selling his land if it was necessary to sell it in order to give him a living. I understand that it was taken to the Supreme Court and that it was decided against him. The Government ought not to take our case like Lone Wolf's case. We are willing to give up part of our reservation, but the Government ought to give us time to consider these matters.

House Report at 25 (A145) (emphasis added.) McLaughlin also discussed the Lone Wolf decision with the Standing Rock Tribe at Fort Yates, North Dakota. See, House Report at 9 (A55-A56).

This review of McLaughlin's discussions with the Cheyenne River Sioux Tribe clearly illustrates that McLaughlin's discussions with the Tribe were premised on the assumption that S. 1385 would redraw the boundaries of the Cheyenne Reservation, and that the redrawn boundaries would reduce the size of the reservation. These negotiations were based on the assumption that the land opened to settlement would be ceded by the

tribe to the federal government. The land would therefore no longer be part of the original reservation. It is not possible to read the contemporaneous accounts of McLaughlin's discussions with the Indians and find that the opening of the reservation to settlement by non-Indians did not affect the external boundaries of the original reservation.

2. Inspector McLaughlin's report to the Indian Service.

The same evidence of an intent to diminish the original Cheyenne River Reservation can be found in Inspector McLaughlin's report to the United States Indian Service on his discussions with the Standing Rock and Cheyenne River Sioux Tribes. This report became a part of the House Report that accompanied the 1908 Surplus Lands Act out of committee. House Report at 5-8 (A37-A51).

In his report, McLaughlin detailed the compromise he had formed between the opening of all

unallotted lands, as had been suggested, and the creation of a compact and diminished reservation:

> The opening of the tracts as outlined in blue pencil on the enclosed map would segregate the Standing Rock and Cheyenne River Reservations by opening a strip 18 miles in width between them, and give to each of said agencies legal subdivision outboundaries and compact diminished reservations, ample for the needs of the Indians of the respective reservations, and I am strongly of the opinion that the lines thus suggested would be for the ultimate best interests of the Indians.

House Report at 7 (A35-A36) (emphasis added.) McLaughlin also outlined the diminished Standing Rock Reservation during his discussions in Fort Yates. At one point, he described the unopened portion of the original reservation as "your diminished reservation." House Report at 13, 16-17 (A87-A88, A95-A98). McLaughlin's report to his superiors continued with the following narrative:

> I explained the said Senate and House bills with reference to opening the surplus lands of the Cheyenne River Reservation, as shown by the minutes of the council, transmitted herewith (Exhibit No. 2), and it will be seen from said minutes . . . that the Indians

> realized it would be advisable for them to consent to the opening of a portion of the surplus lands with the hope of thereby securing a diminished reservation.

House Report at 7 (A48) (emphasis added).

McLaughlin expressed the belief throughout his report to his superiors that the proposed legislation would alter the boundaries of the original Cheyenne River Reservation, diminishing a portion of the original 1889 reservation. This expressed belief certainly coincides with both the intentions and beliefs that were present in the earlier discussions between McLaughlin and the Indians, and the language evidencing diminishment that is found on the face of the Act itself.

3. Congressional action on S. 1385.

Inspector McLaughlin's report and notes were made a part of the Senate and House Reports accompanying the 1908 Surplus Lands Act out of committee. Thus, the beliefs and intentions of Inspector McLaughlin as to the scope of the Act

became a part of the express intention of Congress with respect to the Act. There can be no doubt that McLaughlin believed that the intention of the Act was to diminish the original Cheyenne River Reservation. Based on that determination, the only possible conclusion, with respect to congressional intent, is that Congress also intended to diminish the Cheyenne River Reservation.

The debate in neither the Senate nor the House dealt with jurisdiction in the areas opened to settlement by the 1908 Act. 42 Cong. Rec. 4753-4755 (1908); 42 Cong. Rec. 7004-7005 (1908). The comment by United States District Court Judge Andrew Bogue on this lack of concern about jurisdiction is apropos:

> It appears that neither the Senate nor the House at any time debated the specific question of which governmental entity would have jurisdiction over the area to be opened by S. 1385. It appears further that the matter was not discussed by any committee or at least no one deemed it necessary to put the matter into a committee report if it was

> discussed. That is not surprising. If our analysis is correct, it was an assumption shared by all that S. 1385 would diminish the Cheyenne River and Standing Rock Reservations and that lands outside of the diminished reservations, which had not been allotted, would become part of the public domain. When settlers moved in and paid for their quarter sections, title to the land would be transferred in fee to settlers and the power to govern opened areas would lie with the States.

United States v. Juvenile, supra at 1187.

Further evidence of an intent to diminish the original Cheyenne River Reservation is found in the computation of acreage by the Senate Committee on Indian Affairs. This computation was specifically made a part of the House Report. This computation made the following determination of the estimated acreage of the area which was to be reserved "for the use of the Indians upon both reservations as diminished" after the opening of the reservations:

> The Indians upon both reservations are satisfied to have the surplus and unallotted lands disposed of under the provisions of the bill as amended. The

> area as described in the bill amended provides for the opening of a strip of land 18 miles in width running east and west through the entire width of the reservation, and in addition a strip of land on the western part of the two reservations 36 miles wide by 100 miles in length. The total acreage embraced therein and provided to be opened is 2,972,160 acres. Of this amount 1,728,000 acres is in the Cheyenne River Reservation and 1,244,160 acres is in the Standing Rock Reservation. The lands provided to be opened under the provisions of the bill are all within the State of South Dakota, except 365,600 acres in the State of North Dakota.
>
> Should the bill become a law it will leave to the Indian on the Standing Rock Reservation about 1,250,000 acres and to the Indians upon the Cheyenne River Reservation about 1,150,000, which is exclusive of any allotments now taken or which may hereinafter be taken prior to the opening of the lands to settlement in the area to be opened. The lands reserved for the use of the Indians upon both reservations as diminished, in the opinion of your committee and of the Department, are ample and more than sufficient for the present and future needs of the Indians of the respective tribes.

House Report at 3 (A27-A28) (emphasis added).

The significance of the phrase "reservation thus diminished," as used in section 2 of the 1908

Surplus Lands Act, is discussed earlier in this argument. The persuasiveness of this phrase as evidence of an intent to diminish is enhanced by the portion of the House Report set out directly above. The phrase "reservations as diminished," in the context of this excerpt, can mean only a diminished reservation with diminished reservation boundaries. If the phrase did not mean diminished boundaries, the remaining acres would include some of the allotments in the opened area. It is clear from this report, however, that these acres were not included in the acreage computation. Thus, the use of the phrase "reservations as diminished" can mean only that Congress intended to diminish and reduce the original Cheyenne River Reservation, thereby redrawing the outer boundaries of the original reservation.

The unalterable conclusion that one reaches after review of the entire legislative history of the 1908 Surplus Lands Act is that Congress clearly intended to diminish the boundaries of the

original Cheyenne River Reservation when it enacted that Act. This conclusion is consistent not only with words of the Act itself, but also with the historical setting in which the 1908 Surplus Lands Act was enacted.

D. Subsequent Jurisdictional History.

1. Judicial treatment of the opened area: A jurisdictional nightmare.

From the time of the enactment of the 1908 Surplus Lands Act until 1973, the judicial treatment of the area in question was clear and consistent. Since 1973, however, judicial treatment of the jurisdictional question presented in this appeal can best be described as a "jurisdictional nightmare." A review of the judicial treatment of the opened area shows that, from the time of the opening of a portion of the original reservation to settlement until the Court of Appeal's decision in United States ex rel. Condon v. Erickson, 478 F.2d 684 (8th Cir. 1973), criminal jurisdiction within the area in question

was considered to rest with the State of South Dakota.

In 1911, the Federal District Court for the District of South Dakota was presented with the question of criminal jurisdiction within the portion of the Cheyenne River Reservation opened by the 1908 Surplus Lands Act. The court, in United States v. LaPlant, 200 F. 92 (D.S.D. 1911), concluded that the boundaries of the original reservation had been diminished; therefore, the federal government did not have jurisdiction in the opened area.

After the LaPlant decision, both the federal and state courts operated under the correct assumption that criminal jurisdiction in the opened area rested with the State. see, State v. Sauter, 48 S.D. 409, 205 N.W. 25 (1925); Lafferty v. State ex rel. Jameson, 80 S.D. 411, 125 N.W.2d 171 (1963); State v. Barnes, 81 S.D. 511, 137 N.W.2d 683 (1965); and United States ex rel. Miner v. Erickson, 428 F.2d 623 (8th Cir. 1970).

In Miner, the Court of Appeals, through Circuit Judge Blackmun, refused to grant habeas corpus relief to a prisoner convicted in a South Dakota state court for a crime committed in Eagle Butte, South Dakota, the site of the crime committed by Bartlett. It was in Miner that the first seeds were sown for the jurisdictional problem that is culminating in this action. Circuit Judge Donald P. Lay dissented in Miner, and in a footnote, suggested that the 1908 Surplus Lands Act may not have diminished the Cheyenne River Reservation. Miner, supra at 637 n. 11 (Lay, J., dissenting).

In 1973, the Court of Appeals acted upon Judge Lay's dissent in Miner, concluding that the area opened to settlement by the 1908 Act was still part of the original Cheyenne River Reservation. Erickson, supra at 689. In 1977, the South Dakota Supreme Court was faced with the same jurisdictional question that is presented in the instant appeal. The consideration of Stankey

v. Waddell, supra, took place after the United States Supreme Court's decisions in DeCoteau and Rosebud Sioux Tribe. The South Dakota Supreme Court, believing that these decisions had some effect on the Court of Appeals' decision in Erickson, did not follow the Court of Appeals, concluding instead that the area opened by the 1908 Surplus Lands Act was no longer part of the original reservation. Stankey, supra at 127.

The Court of Appeals again reviewed the question when it heard the appeal in United States v. Juvenile, supra. District Court Judge Andrew W. Bogue, after an exhaustive examination of the 1908 Surplus Lands Act, its legislative history, the surrounding circumstances and the subsequent jurisdictional events, found that the current Cheyenne River Reservation did not include the portions of the original reservation opened to settlement by the Act. In reviewing the District Court's decision, the Court of Appeals maintained its reliance upon the Erickson

rationale. Based on that precedent, the District Court's decision was overruled. United States v. Dupris, 612 F.2d 319, 320 (8th Cir. 1979). On appeal, this Court granted certiorari. The judgment was then vacated and remanded to the District Court to determine whether the question was moot. Dupris v. United States, 446 U.S. 980 (1980). On remand, the action was dismissed upon the motion of the Government. United States v. Dupris, 664 F.2d 169 (8th Cir. 1981).

Following Dupris, the South Dakota Supreme Court was again presented with the issue of criminal jurisdiction in the opened portion of the original Cheyenne River Reservation. The court vigorously reaffirmed Stankey, while unquestionably condemning the inadequacy of the Court of Appeals' analysis in Erickson. The court concluded:

> We hold that the Surplus Lands Act of 1908, on its face, from surrounding circumstances and legislative history disestablished tribal and federal jurisdiction over unallotted lands on the

> Cheyenne River Indian Reservation. Thus, the legislative intent sufficiently expresses a policy of disestablishment to override the rule of construction that ambiguities and doubtful expressions are resolved favorably to the Indians.

State v. Janis, supra at 137.

Soon after the Janis decision was issued, the present action began in United States District Court for the District of South Dakota. In affirming the decision of District Judge Donald J. Porter, the Court of Appeals again relied upon its Erickson decision, and found no congressional intent to diminish the original Cheyenne River Reservation. Bartlett, supra at 421.

It is clear that for nearly sixty years, the legal jurisdiction on the opened portion of the original reservation rested with the State of South Dakota. Even after the Court of Appeals' decision in Erickson, South Dakota's court system, using the guidelines set by this Court in Rosebud Sioux Tribe and DeCoteau, has consistently found state jurisdiction in the opened areas of the original reservation through well-reasoned and

logical decisions. The finding of an intent to diminish is consistent with the words of the 1908 Surplus Lands Act, the definition given to those words by the historical context surrounding the passage of the Act, and the legislative history of the Act itself.

2. Subsequent legislative action.

A review of the most relevant piece of legislative action dealing with the diminished Cheyenne River Reservation clearly supports the argument that Congress intended to diminish the original reservation through the 1908 Surplus Lands Act. In 1910, Congress enacted a prohibition against the introduction of intoxicants into the opened portion of the original reservation. Act of February 17, 1910, 36 Stat. 196. The significance of this amendment is discussed above in detail. It should be noted again, however, that this Court found a similar provision in the 1910 Rosebud Act, Act of May 30, 1910, 36 Stat. 448,

to be an expression of a congressional intent to diminish the original Rosebud Reservation. Rosebud Sioux Tribe, 430 U.S. at 613-615.

3. Subsequent executive action.

The following review of subsequent executive department actions with regard to the portion of the original Cheyenne River Reservation opened by the 1908 Surplus Lands Act illustrates that these actions are consistent with the intent to diminish that was evidenced at the time of the original opening of the reservation:

a. Tribal Constitution and Bylaws. On December 27, 1935, the Secretary of Interior approved a constitution and bylaws for the Cheyenne River Sioux Tribe which gave the Tribe jurisdiction over the confines of the original reservation boundaries. However, this Court has not found similar executive department action to be supportive of an intent to diminish. Rosebud Sioux Tribe, 430 U.S. at 616 n. 1.

b. BIA Agency location. The location of the Bureau of Indian Affairs Agency at Eagle Butte, which is within the area opened by the 1908 Act, does not evidence a belief on the part of the federal government that the reservation boundaries were not diminished and redrawn by the Act. Federal law does not require the agency to be built "on the reservation." The applicable statute requires that the "agent for said Indians . . . reside among [the Indians]." 15 Stat. at 636. Eagle Butte is the geographic and demographic center of the original Cheyenne River Reservation, and was well-suited as an agency location. At that time, it was the only community in this rural area with the support services necessary for an Agency location. It also fulfills the requirements set by statute.

c. Restoration of opened lands. In 1934, Congress provided that lands in portions of reservations, which had been opened for settlement and which had never been purchased, could

be returned to the tribe "if [the Secretary of the Interior found] it to be in the public interest." 25 U.S.C. § 463. A 1934 decision by the Solicitor of the Department of Interior states that the land subject to a prior cession could not be subsequently restored to an Indian reservation. 54 Interior Dec. 559, 560 (1934). However, the restoration of the lands to the tribe by the Secretary of Interior does not evidence a belief that the boundaries of the original reservation were not changed. A later decision by the Solicitor of the Interior Department determined that it was not a prerequisite to restoring lands to Indians under 25 U.S.C. § 463 that the land still be a part of a reservation. 56 Interior Dec. 330, 333 (1938). It is further suggested that the Secretary of Interior's orders restoring plots of land to the Cheyenne River Sioux Tribe are inconclusive as to the intent to diminish. In some cases the Secretary referred to the areas opened by the 1908 Act as part of the reservation. The

same orders, however, also refer to the opened area as "ceded land" and as being outside the "existing reservation." 32 Fed. Reg. 14,276 (1967); 22 Fed. Reg. 3693 (1957).

CONCLUSION

The United States Court of Appeals for the Eighth Circuit has again misapplied the analysis required in diminishment questions as set forth in the decisions of this Court. In United States ex rel. Condon v. Erickson, supra, United States v. Dupris, supra, and Bartlett v. Solem, supra, the Court of Appeals has either ignored or overlooked very strong and convincing evidence of a congressional intent to diminish the original Cheyenne River Reservation. This Court, in Rosebud Sioux Tribe, supra, and DeCoteau, supra, set forth guidelines that courts must follow when interpreting Acts of Congrss which opened the original boundaries of established Indian reservations to settlement by non-Indians.

The Court of Appeals has not followed these guidelines in its interpretation of the 1908 Surplus Lands Act, Act of May 29, 1908, 35 Stat. 460, which so opened portions of the original Cheyenne River Reservation.

The foregoing analysis highlights the clear evidence of an intent to diminish which exists in regard to the 1908 Surplus Lands Act. Specific words and phrases of the Act itself and the amendments thereto evidence the intent to diminish the boundaries of the original reservation.

In addition, the 1908 Surplus Lands Act at question in this appeal is just one of many similar Surplus Lands Acts enacted during the same historical era. This era was highlighted by "familiar forces," which worked against the continued viability of large Indian reservations. These other acts diminished the boundaries of the reservations they affected. See, Rosebud Sioux Tribe, supra; DeCoteau, supra; United States ex rel. Cook v. Parkinson, supra. The historical

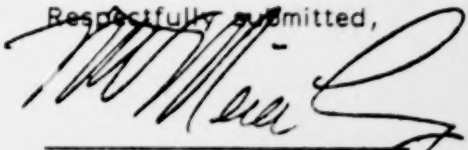
setting in which the 1908 Surplus Lands Act was enacted supports the intent to diminish found on the face of the Act.

Further, a review of the legislative history of the Act, including the notes and reports of Inspector James McLaughlin from his discussions with the Standing Rock and Cheyenne River Sioux Tribes, supports the intent to diminish found on the face of the Act itself. These reports and notes, which are a part of both the House and Senate Reports that accompanied the 1908 Surplus Lands Act out of committee, unquestionably support the claim that Congress intended, with the passage of the 1908 Surplus Lands Act, to diminish the boundaries of the original Cheyenne River Reservation.

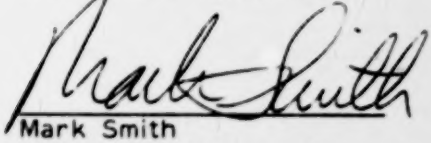
Finally, a review of the subsequent legislative, executive and judicial treatment of the area in question also unmistakenly supports an intent to diminish the original reservation.

Based on the foregoing arguments and authorities, Petitioners Solem and Meierhenry respectfully request that this Court reverse the decision of the United States Court of Appeals for the Eighth Circuit, find that the original boundaries of the Cheyenne River Reservation have been diminished, find that the State of South Dakota has criminal jurisdiction over the opened area, and deny Respondent Bartlett's Petition for Writ of Habeas Corpus.

Respectfully submitted,



MARK V. MEIERHENRY
ATTORNEY GENERAL



Mark Smith
Assistant Attorney General
State Capitol
Pierre, South Dakota 57501-5090
Telephone: (605) 773-3215

August, 1983

APPENDIX

APPENDIX A

Act of May 29, 1908, 35 Stat. 460.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed, as hereinafter provided, to sell and dispose of all that portion of the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota lying and being within the following described boundaries, to-wit: Beginning at a point on the one hundred and second meridian of longitude west, where the township line between townships nine and ten north intersects the same; thence east on said township line to a point where the same intersects the range line between ranges twenty-four and twenty-five east of the Black Hills meridian; thence north on said range line to a point where the same intersects the township line

between townships fifteen and sixteen north; thence east along said township line to a point in the center of the main channel of the Missouri River; thence in a northerly direction along the center of the main channel of said Missouri River to a point where the township line between townships eighteen and nineteen north intersects the same, and including also entirely all islands, if any, in said river; thence west on said township line to a point where the range line between ranges twenty-two and twenty-three east intersects the same; thence north along said range line to the northwest corner of section nineteen in township twenty-one north of range twenty-three east; thence east on the section line north of sections nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four to a point where the same intersects the range line between ranges twenty-three and twenty-four east; thence

north along said range line to the State line between the States of South Dakota and North Dakota; thence west on said State line to a point where the range line between ranges eighty-four and eighty-five west in North Dakota intersects the same; thence north on said range line to a point where said range line intersects the center of the main channel of the South Fork of the Cannon Ball River; thence in a westerly direction up and along the center of the main channel of the said river to a point where the same intersects the one hundred and second meridian of longitude west; thence south along said one hundred and second meridian of longitude west; thence south along said one hundred and second meridian of longitude west to the place of beginning, except such portions thereof as have been alloted to Indians: Provided, that sections sixteen and thirty-six of the lands in each township therein shall not be disposed of, but shall be reserved for the use of the common schools of the

States of South Dakota and North Dakota, as the same may be located in the said States, respectively: Provided further, That the Secretary of the Interior may reserve such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved as long as needed, and as long as agency, school, or religious institutions are maintained thereon for the benefit of said Indians: Provided, however, that the Secretary of the Interior is hereby authorized and directed to issue a patent in fee simple to the duly authorized missionary board, or other proper authority of any religious organization heretofore engaged in mission or school work on said reservations, for such lands thereon (not included in any town site herein provided for) as have been heretofore set apart to such organization for mission or school purposes.

SEC. 2. That the lands shall be disposed of by proclamation under the general provisions of the homestead and town-site laws of the United

States, and shall be opened to settlement and entry to proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in such proclamation: Provided, That prior to the said proclamation the Secretary of the Interior, in his discretion, may permit Indians who have an allotment within the area described in section one of this Act to relinquish such allotment and to receive in lieu thereof an allotment anywhere within the respective reservations thus diminished to which reservation the said Indians may belong: Provided further, That prior to the said proclamation the Secretary of the Interior shall cause allotments to be made to every man, woman, and child belonging to or holding tribal relations in said Cheyenne River and Standing Rock reservations who have not

heretofore received the allotments to which they are entitled under provisions of existing laws: Provided futher, That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the lands embraced within said reservations, and to cause an examination to be made of the lands by experts of the Geological Survey, and if there be found any lands bearing coal, the said Secretary is hereby authorized to reserve them from allotment or disposition until further action by Congress: Provided further, That the rights of honorably discharged Union soldiers and sailors of the late civil and Spanish wars or Philippine insurrection, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes, as amended by the Act of March first, nineteen hundred and one, shall not be abridged.

SEC. 3. That the price of said lands entered as homesteads under the provisions of this Act shall be fixed by appraisement as herein provided. The President of the United States shall appoint two commissions, one for each reservation, each commission to consist of three persons to inspect, appraise, and value all of said lands that shall not have been allotted in severalty to said Indians, or reserved by the Secretary of the Interior or otherwise disposed of, and excepting sections sixteen and thirty-six in each of said townships, each commission to be constituted as follows: One resident citizen of the States of North or South Dakota, one representative of the Indian Bureau and one person holding tribal relations with one of said tribes of Indians. That within twenty days after their appointment the said commissioners so appointed for each of the said reservations, respectively, shall meet and organize by the election of one of their number as chairman. Each commission is hereby

empowered to select such clerks and assistants at such compensation as the Secretary of the Interior may approve. That said commissioners shall then proceed to personally inspect, classify, and appraise, in one hundred and sixty acre tracts each, all of the remaining lands embraced within each reservation as described in section one of this Act. In making such classification and appraisement said lands shall be divided into the following classes: First, agricultural land of the first class; second, agricultural land of the second class; third, grazing land, fourth, timber land; fifth, mineral land, if any, the mineral land not to be appraised. That said commissioners shall be paid a salary of not to exceed ten dollars per day each while actually employed in the inspection and classification of said lands and necessary expenses to be approved by the Secretary of Interior; such inspection and classification to be completed within six months from the date

of the organization of said commissions respectively, and no compensation shall be paid to either the commissioners or employees after the said six months. That when said commissions shall have completed the classification and appraisement of all of said lands the same shall be subject to the approval of the Secretary of the Interior.

SEC. 4. That the price of said lands shall be paid in accordance with the rules and regulations to be prescribed by the Secretary of the Interior upon the following terms: One fifth of the purchase price to be paid in cash at the time of entry, and the balance in five equal annual installments, to be paid in one, two, three, four, and five years, respectively, from and after the date of entry. In case any entryman fails to make the annual payments, or any of them, when due, all rights in and to the land covered by his entry shall cease, and any payments theretofore made shall be forfeited and entry canceled, and

the lands shall be reoffered for sale and entry under the provisions of the homestead law at the appraised price thereof: And provided, That nothing in this Act shall prevent homestead settlers from commuting their entries under section twenty-three hundred and one, Revised Statutes, by paying for the land entered the price fixed herein, receiving credit for payments previously made. In addition to the price to be paid for the land, the entryman shall pay the same fees and commissions at the time of commutation or final entry as now provided by law, where the price of land is one dollar and twerty-five cents per acre, and when the entryman shall have complied with all the requirements and terms of the homestead laws as to settlement and residence and shall have made all the required payments aforesaid he shall be entitled to a patent for the lands entered: And provided further, That all lands remaining undisposed of at

the expiration of four years from the opening of said lands to entry may, in the discretion of the Secretary of the Interior, be reappraised in the manner provided for in this Act. And it is further provided that any lands remaining unsold after said lands have been open to entry for seven years may be sold to the highest bidder for cash without regard to the prescribed price thereof fixed under the provisions of this Act, under such rules and regulations as the Secretary of the Interior may prescribe.

SEC. 5. That the Secretary of the Interior is authorized to reserve from said lands such tracts for townsite purposes as in his opinion may be required for the future public interests, and he may cause the same to be surveyed into blocks and lots and disposed of under such regulations as he may prescribe, in accordance with section twenty-three hundred and eighty-one of the United States Revised Statutes. The net proceeds

derived from the sale of such lands shall be credited to the Indians as hereinafter provided.

Sec. 6. That from the proceeds arising from the sale and disposition of the lands aforesaid, exclusive of the customary fees and commissions, there shall be deposited in the Treasury of the United States, to the credit of the Indians belonging and having tribal rights on the reservations aforesaid in the States of South Dakota and North Dakota the sums to which the respective tribes may be entitled, which shall draw interest at three per centum per annum; that the moneys derived from the sale of said lands and deposited in the Treasury of the United States to the credit of said Indians respectively shall be expended for their benefit under the direction of the Secretary of the Interior.

SEC. 7. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this Act shall not be

subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at one dollar and twenty-five cents per acre, and the same are hereby granted to the States of South Dakota and North Dakota for such purpose as the same are located in the said States respectively; and in case any of said sections, or parts thereof, are lost to said States by reason of allotments thereof to any Indian or Indians, or otherwise, the governors of said States, respectively, with the approval of the Secretary of the Interior, are hereby authorized, within the area in the respective States described in section one of this Act, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

SEC. 8. That there is hereby appropriated, out of any money in the Treasury not otherwise

appropriated, the sum of not more than two hundred and twenty-five thousand dollars, or so much thereof as may be necessary, to pay for the lands granted to the States of South Dakota and North Dakota, as provided in section seven of this Act. And there is hereby appropriated the further sum of seventy-five thousand dollars, or so much thereof as may be necessary, for the purpose of making the appraisement and classification and allotments provided for herein: Provided, That the latter appropriation, or any futher appropriation hereafter made for the purpose of carrying out the provisions of this Act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribes respectively.

SEC. 9. That nothing in this Act contained shall in any manner bind the United States to purchase any portion of the land herein described, except sections sixteen and thirty-six or

the equivalent in each township, or to dispose of said land except as provided herein, or to guarantee to find purchasers for said lands or any portion thereof, it being the intention of this Act that the United States shall act as trustee for said Indians to dispose of the said lands and to expend and pay over the proceeds received from the sale thereof only as received and as herein provided: Provided, That nothing in this Act shall be construed to deprive the said Indians of the Cheyenne River or Standing Rock Indian reservations, in South Dakota and North Dakota, of any benefits to which they are entitled under existing treaties or agreements not inconsistent with the provisions of this Act: Provided, That Indians residing upon their allotments in townships sixteen north of ranges twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, and thirty-one east shall have the right to use timber in said townships, except on

sections sixteen and thirty-six for domestic purposes only as long as the lands remain part of the public domain.

Approved, May 29, 1908.

APPENDIX B

Act of February 17, 1910, 36 Stat 196.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section seven and eight of the Act of May twenty-ninth, nineteen hundred and eight, entitled "An Act to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect," are amended and as so amended are reenacted to read as follows:

Sec.7. That sections sixteen and thirty-six of the land in each township within the tract described in section one of this Act shall not be subject to entry, but shall be reserved for the use of the common schools and paid for by the United States at two dollars and fifty cents per

acre, and the same are hereby granted to the States of South Dakota and North Dakota for such purpose as the same are located in the said States, respectively; and in case any of said sections, or parts thereof, are lost to said States by reason of allotments thereof to any Indian or Indians, or otherwise, the governors of said States, respectively, with the approval of the Secretary of the Interior, are hereby authorized, within the area in the respective States described in section one of this Act, to locate other lands not occupied not exceeding two sections in any one township, which shall be paid for by the United States as herein provided, in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement.

Sec. 8. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of not more than four hundred and fifteen thousand dollars, or so much

thereof as may be necessary, to pay for the lands granted to the States of South Dakota and North Dakota, as provided in section seven of this Act. And there is hereby appropriated the further sum of seventy-five thousand dollars, or so much thereof as may be necessary, for the purpose of making the appraisement and classification and allotments provided for herein: Provided, That the latter appropriation, or any further appropriation hereafter made for the purpose of carrying out the provisions of this Act, shall be reimbursed to the United States from the proceeds received from the sale of the lands described herein or from any money in the Treasury belonging to said Indian tribes, respectively: And provided further, That the lands allotted, those retained or reserved, and the surplus lands sold, set aside for town-site purposes, or granted to the said States, or otherwise disposed of under the provisions of this Act, shall be subject for a period of twenty-five years to all the laws of the

United States prohibiting the introduction of intoxicants into the Indian country.

Approved, February 17, 1910.

APPENDIX C

60th Congress,) HOUSE OF REPRESENTATIVES
1st Session.) Report
No. 1539.

SALE OF PORTION OF SURPLUS LANDS ON CHEYENNE RIVER AND STANDING ROCK RESERVATIONS

April 20, 1908.--Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Marshall, from the Committee on Indian Affairs, submitted the following

REPORT.

[To accompany S. 1385.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1385) to authorize the sale and disposition of a portion of the surplus and unallotted lands on the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into

effect, having had the same under consideration, beg leave to report that said bill do pass with the following amendments:

Page 4, strike out all after the word "reservations" in lines 6, 7, and 8.

Page 4, lines 18, 19, and 20, strike out the words "under the homestead laws in accordance with the coal-land laws of the United States for the benefit of the tribes in common" and insert in lieu thereof "until further action by Congress."

Page 5, line 13, strike out the word "State" and insert the words "States of North or."

Page 5, line 18, after the word "meet," strike out all down to and including the word "commission" in line 21.

Page 5, line 21, strike out the word "shall" and insert the word "and" in lieu thereof.

Page 5, lines 23, 24, and 25, strike out the words "as may be necessary at a salary of not to exceed $5 per day, subject to the approval of" and insert in lieu thereof the words "and at such compensation as."

Page 5, line 25, after the word "Interior," insert the words "may approve."

Page 6, line 15, after the word "respectively," insert the words "and no compensation shall be paid to either the Commissioners or employees after the expiration of the said six months."

Page 7, line 1, strike out the word "promptly."

Page 7, line 21, after the word "may" insert the words "in the discretion of the Secretary of the Interior."

Page 8, line 17, after the word "Dakota," strike out the word "as" and insert the words "the sums to which" in lieu thereof.

Page 8, line 18, strike out the word "thereto."

Page 8, line 19, 20, and 21, strike out the words "the interest to be paid to the Indians per capita in cash annually, share and share alike."

Page 8, line 25, after the word "Interior," strike out the words "and he may, in his discretion, upon an application;" and strike out all of lines 1, 2, 3, and 4 on page 9.

Page 9, line 9, strike out the words "and fifty cents."

Page 10, line 1, strike out the word "four" and insert the words "not more than three."

Page 10, line 1, strike out "fifteen" and insert "fifty" in lieu thereof.

Page 10, line 9, after the word "appropriation," insert the words "or any further appropriation hereafter made for the purpose of carrying out the provisions of this act."

Page 10, line 22, after the word "received," insert the word "and."

This bill provides for opening by proclamation of the President, for settlement by homesteaders, of portions of the Standing Rock Indian Reservation in North and South Dakota and the Cheyenne Indian Reservation in South Dakota.

Provision is made for allotments to be made to all the Indians of both reservations and also for exchange of allotments on the part of those who desire to exchange, and the remaining lands, except sections 16 and 36, are to be classified and appraised by two commissions, one for each reservation, consisting of three persons, made up of one resident of North or South Dakota, one Indian, and one representative of the Indian Department. The lands are to be classified, first, into agricultural lands of the first class; second, agricultural lands of the second class; third, grazing lands; fourth, timber lands, and, fifth, mineral lands, which latter are not to be disposed of or appraised.

The lands shall be paid for by the homesteader at the appraised price, one-fifth of the purchase price in cash and the balance in five equal annual installments. The lands remaining undisposed of at the expiration of four years from the opening may be reappraised, in the discretion

of the Secretary of the Interior, and the lands remaining unsold after seven years may be sold to the highest bidder for cash, without regard to price, under rules and regulations prescribed by the Secretary of the Interior.

Proceeds from the sale of the lands shall be placed to the credit of the Indians and draw interest at the rate of 3 per cent per annum.

Sections 16 and 36 are reserved as school lands for the States of North Dakota and South Dakota, which is in accordance with the enabling acts of these States. An appropriation is made to pay the Indians for these lands at the rate of $2 per acre.

An appropriation is also made to cover the expenses of the two commissions to classify and appraise the land, but this appropriation is reimbursement out of the proceeds of the sale of the lands.

The Secretary of the Interior is authorized to reserve such tracts for town-site purposes as may be required for future public interests.

Section 9 provides that the United States shall in no manner be bound to purchase any portions of the lands except sections 16 and 36, or their equivalent in each township, or assume any other obligation other than as trustee for said Indians to dispose of the lands and expend and pay over the proceeds received from the sale thereof only as received.

Your committee adopts the following portions of the Senate Report No. 439, from the Committee on Indian Affairs, and part 2, Senate Report No. 439, from the same committee:

> The Indians upon both reservations are satisfied to have the surplus and unallotted lands disposed of under the provisions of the bill as amended. The area as described in the bill as amended provides for the opening of a strip of land 18 miles in width running east and west through the entire width of the reservation, and in addition a strip of land on the western part of the two reservations 36 miles wide by 100 miles in length. The total acreage embraced therein and provided to be opened is 2,972,160 acres. Of this amount 1,728,000 acres is in the Cheyenne River Reservation and 1,244,160 acres is in the Standing Rock Reservation.

The lands provided to be opened under the provisions of the bill are all within the State of South Dakota, except 365,600 acres in the State of North Dakota.

Should the bill become a law it will leave to the Indians on the Standing Rock Reservation about 1,250,000 acres and to the Indians upon the Cheyenne River Reservation about 1,150,000, which is exclusive of any allotments now taken or which may hereafter be taken prior to the opening of the lands to settlement in the area to be opened. The lands reserved for the use of the Indians upon both reservations is diminished, in the opinion of your committee and of the Department, are ample and more than sufficient for the present and future needs of the Indians of the respective tribes. It is of the utmost importance for the upbuilding and development of the particular region of the States of South Dakota and North Dakota that the bill should pass and that these lands should be opened to settlement. It is believed that such opening will not only prove a great benefit and advantage to the people of the States and to prospective settlers, but to the Indians themselves. It will afford an immediate opportunity for the settlement and development of this vast area, which will not only bring added wealth to the States, but to the holdings and property of the Indians themselves.

Although Congress has plenary power to open the lands independent of the consent or agreement of the Indians, it has been thought wise to

consult their wishes and conform thereto as nearly as may be consistent with their own interest and the welfare of the people as a whole. In the opinion of the committee, the provisions of the bill are just and equitable to the Indians and believe they will be to the prospective settlers.

A great railway system has recently been extended westward to the Pacific through the Standing Rock Indian Reservation and extends through the lands on that reservation proposed to be opened. It is hoped, should the bill become a law and the lands opened as is proposed, other railways will be extended west of the Missouri River through the lands opened to settlement, which will lead to a rapid development of the northwestern section of the State of South Dakota and greatly benefit the Indians not only upon the lands opened to settlement, but also the holdings of the Indians upon the reduced reservations.

The bill has the earnest and cordial support of the Department, and there are herewith submitted and made a part of this report communications from the Secretary of the Interior and Commissioner of Indian Affairs.

Department of the Interior, Washington, December 26, 1907.

Sir: I am in receipt of a copy of S. 1385, entitled "A bill to authorize the sale and disposition of a portion of the surplus and unallotted

lands in the Cheyenne River and Standing Rock Indian reservations, and making appropriation and provision to carry the same into effect," transmitted by you on December 20, 1907, with request for report.

In response I beg to advise you that I sincerely hope that the Congress will defer action on this measure for a short time because instructions have been given an experienced Indian inspector to confer with the Indians of these two reservations for the purpose of obtaining definite knowledge as to their wishes. I am induced to follow the course in part by the fact that I have been advised that these Indians may desire to cede a greater area than the bill covers, and I am anxious to comply with their wishes in this regard if it is practicable.

As soon as the inspector reports, which will be in a short time, it will be forwarded to you

with appropriate recommendations in connection with this bill.

Very respectfully,

Frank Pierce, Acting Secretary.
Hon. Moses E. Clapp, Chairman
Committee on Indian Affairs,
United States Senate.

Department of Interior,
Office of Indian Affairs,
Washington, March 30, 1908.

Sir: I am in receipt of a copy, revised by you, of S. 1385, entitled "A bill to authorize the sale and disposition of a portion of the surplus and unallotted lands in the Cheyenne River and Standing Rock Indian reservations, in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into effect," with request for comment.

Certain amendments have been made to the bill as originally introduced in the Senate to meet the views of the Indians of these reservations as to the form of legislation which should be enacted and the lands to be opened.

If the bill in its present form is enacted into law a strip of land about 18 miles in width running east and west, through the entire width of the reservation will be opened to settlement and entry, in addition to a strip 36 miles wide on the extreme western part of both reservations.

Provision is made for the allotment of each man, woman, and child belonging to or holding tribal rights on the reservations who have not heretofore received allotments, in accordance with the provisions of existing laws. The surplus lands are to be disposed of under the provisions of the homestead laws at a price to be fixed by a commission whose duty it shall be to appraise the surplus lands. Sections 16 and 36 of each township are granted to the respective States wherein they lie, to be paid for by the United States at the rate of $2.50 per acre.

Provision is made also for the reservation of such lands for town-site purposes as in the opinion of the Secretary of the Interior may be

required for the future public interests, and for their sale in accordance with section 2381 of the Revised Statutes. The proceeds of the sale of the surplus lands and the town sites are to be placed to the credit of the Indians of the respective reservations in the Treasury of the United States and will draw interest at the rate of 3 per centum per annum.

An appropriation of $75,000, or so much thereof as may be necessary, is made to pay for the lands granted to the States of South Dakota and North Dakota, and a further appropriation of $20,000, or so much thereof as may be necessary, for the purpose of making the appraisement, classification, and allotments provided for in the act, the latter appropriation to be reimbursed to the United States from the sale of the lands to be opened to settlement and entry.

From the reports which the Office has received it appears that there are valuable coal lands on these reservations, and I am of the

opinion that provision should be made in the bill for the reservation of such lands for the benefit of the tribes in common.

As all the lands of the reservations have not been surveyed, I believe that provision should be made in the bill providing therefor.

I therefore recommend that the bill be amended by inserting the following clause after the word "laws," in line 24, page 2:

"Provided further, That the Secretary of the Interior be, and he is hereby, authorized and directed to cause to be surveyed all the lands embraced within said reservations, and to cause an examination to be made of the lands by experts of the Geological Survey, and if there be found any lands bearing coal the said Secretary is hereby authorized to reserve them from allotment or disposition under the homestead laws, to be disposed of in accordance with the coal-land laws of the United States for the benefit of the tribes in common."

The sum appropriated by the bill will be entirely inadequate to pay for the lands granted by the tribes to the States for school purposes, as the total acreage granted will approximate 166,000 acres. To pay for them at the rate of $2.50 per acre would require $415,000. I therefore recommend that the word "seventy-five" in line 6, page 8, be stricken out and the words "four hundred and fifteen" inserted in lieu thereof.

A much larger appropriation will be necessary to survey the lands and carry out the other provisions of the act.

I therefore recommend that the word "twenty," in line 9, page 8, be stricken out and the word "seventy-five" inserted in lieu thereof.

The bill as handed in by you for my examination seems to be satisfactory, so far as I can see, but it is understood that some suggestions are on the way from the field which it may be desirable to consider. If these should be of such

importance as to render it desirable to alter the bill in any respect it could be done either by recommittal in committee or on the floor, as may seem to you expedient.

Very respectfully,

F. E. Leupp, Commissioner.
Hon. Robert J. Gamble,
United States Senate.

[Senate Report 439, Part 2, Sixtieth Congress, first session.]

Mr. Gamble, from the Committee on Indian Affairs, submitted the following supplemental REPORT.

[To accompany S. 1385.]

The Committee on Indian Affairs, to whom was referred the bill (S. 1385) to authorize the sale and disposition of a portion of the surplus and unallotted lands on the Cheyenne River and Standing Rock Indian reservations in the States of South Dakota and North Dakota, and making appropriation and provision to carry the same into

effect, beg leave to submit the following papers as a supplemental report:

Department of the Interior,
United States Indian Service.
Washington, D.C., March 30, 1908.

Sir: Under departmental instructions of December 26, 1907, and March 4, 1908, respectively, I have the honor to report the result of councils held by me with the Indians of the Standing Rock and Cheyenne River reservations in the States of North and South Dakota, with reference to the opening of the surplus lands of the two said reservations to settlement, as contemplated by Senate bill 1385 and House bills 17825 and 17884. Sixtieth Congress, first session, copies of which bills were furnished me to submit and explain to the said Indians.

I met the Indians of the Standing Rock Reservation in council at Fort Yates, N.Dak. on the 9th instant, with a very full attendance of the leading men of the reservation present, which

council was convened at 1 o'clock p.m. on Monday, the 9th instant, and adjourned sine die at 11:10 p.m. on Tuesday, the 10th.

As may be seen by the council's minutes transmitted herewith (Exhibit No. 1), the provisions of the bills referred to were clearly explained and fully discussed, and after the Indians were brought to understand the various phases of the question they met the wishes of Congress very commendably by consenting to what would seem to be a reasonable compromise between the said Senate and House bills.

After a careful study of the proposed legislation and being quite familiar with the conditions prevailing in the Standing Rock and Cheyenne River reservations, and also showing that the area of these two reservations was much greater than the Indians can make proper use of, and that the opening of some of the surplus lands is demanded in the development of that section of the country, I deemed it best to submit a definite

proposition as to the tract I thought the Indians should relinquish, and therefore suggested that they relinquish all the surplus lands of their reservation lying west of the line dividing ranges 23 and 24 in South Dakota and ranges 84 and 85 in North Dakota, together with one tier of townships lying along the southern boundary of their reservation, after allotments to those entitled thereto have been completed.

In order that the Indians might fully understand the boundaries of the proposed diminished reservation I indicated with a blue pencil on a map of South Dakota the area which I believed would be to the best interests of the Indians to relinquish, which map I transmit herewith (Exhibit No. 3). The area indicated by blue-pencil line on said map was clearly explained to the Standing Rock Indians, as may be seen by reference to pages 4 to 17, inclusive, of the council minutes (Exhibit No. 1).

After I had submitted the question and fully explained the proposed legislation to those assembled, a recess was taken for the purpose of enabling the Indians to discuss the matter among themselves. And, as may be seen by the council minutes, they, in tribal council, agreed to the opening of the western portion of their reservation, lying west of the line dividing ranges 21 and 22 in South Dakota and ranges 86 and 87 in North Dakota, being four tiers of full townships, together with a fractional tier of townships lying along the western boundary of the reservation, the tract thus decided upon by the Indians being about 25 miles in width on the western portion of their reservation, or a total of about 29 townships.

The Indians in conference selected four of their people and instructed them what to say with reference to the question submitted, namely, Arthur Tibbets, Thomas Frosted, Antoine Derockbrain, and John Grass, who announced

what had been agreed upon, and whose speeches appear on pages 6 to 17, inclusive, of the council minutes. They demanded that payment be made to the Indians annually from the proceeds of the sale of the lands disposed of instead of depositing it in the United States Treasury to their credit, to draw interest at 3 per cent per annum for ten years, as provided by section 6 of said bills; also, that they receive $2.50 per acre for sections 16 and 36 of the lands in each township reserved for the use of the common schools of the respective States in which the lands are situated, instead of $1.25 per acre, as provided in said bills.

With the exception of these two provisions, the said bills met with the general concurrence of the Indians, but they desired it made clear that all persons entitled to allotments should be privileged to make their selections anywhere within the reservation as it now exists.

Replying to their request for annual payments from the proceeds of the lands and the higher price for the school sections than provided in the bills, I promised the Indians that I would report their contention regarding these two questions, and would submit the following memorandum with reference to the proposed interest-bearing fund, with the recommendation that it be substituted for the said provision:

"That the proceeds derived from the sale of said lands shall be expended for the benefit of the Standing Rock Indians, in the discretion of the Secretary of the Interior, upon an application to the Department annually by a majority petition of the said Indians, through the Indian agent in charge of the Standing Rock Reservation and upon his recommendation."

And to meet their wishes in regard to the double minimum price for sections 16 and 36 of each township within the tract relinquished, I promised to recommend the following:

"That sections sixteen and thirty-six of the lands in each township of the tract relinquished shall not be subject to entry but shall be reserved for the use of the common schools of the States of North and South Dakota, respectively, for the State in which the lands relinquished are situated, and paid for by the United States at two dollars and fifty cents per acre, and in case any of said sections or parts thereof, of the land in the tract relinquished, are lost to the States aforesaid by reason of the allotment thereof to Indians or otherwise, the governors of the said respective States with the approval of the Secretary of the Interior, may locate other lands of similar character and equal value not occupied, and not exceeding two sections in any one township, which shall be paid for by the United States, as herein provided in quantity equal to the loss, and such selections shall be made prior to the opening of such lands to settlement."

After the four speakers had expressed themselves in favor of relinquishing but twenty-nine townships of land, I stated my views very clearly as to the various phases of the question under consideration, whereupon Thomas Frosted, one of the four said spokesmen for the council, expressed his individual views, favoring the opening of the tract indicated in blue pencil on the inclosed map, and he was followed by Siaka, one of the leading Indians of the reservation, who also strongly spoke in favor of the cession thus indicated.

Just previous to the adjournment of our council on the evening of the 10th instant I notified the Indians that I would remain at the agency the following day, and that I would be pleased to respond to any call they might make for additional information. Early in the morning of the 11th, One Bull, a nephew of Sitting Bull and who succeeded that noted Indian as chief of the Sitting Bull band, called upon me and stated

that he favored the lines suggested by me from the beginning and advocated it in the tribal council, but did not have sufficient support to carry his motion by a majority vote of the Indians present. He then requested me to prepare a paper which he, together with others who wished to concur in the lines suggested by me, might sign. I prepared the paper as requested by One Bull, and it was immediately signed by ninety of the Indians of those who had attended the councils of the two previous days, and which paper is transmitted herewith (Exhibit No. 4).

A number of Indians who had not been present at the council, upon learning the proceedings of our two days' conference, suggested that I prepare another paper for circulation among the Indians of the reservation who had not attended the conferences, to be accompanied by a copy of the minutes of the council, which I did, and which was sent out by Agent Belden to the several substations of the reservation for the

signatures of those who concurred in the suggested lines, and which petition, containing 220 signatures, is also transmitted herewith (Exhibit No. 5).

The Indians of the Upper Grand River prepared another paper, which provided for the relinquishment of similar acreage, with a slight change as to certain of the townships, and circulated it for signatures, they desiring to retain townships 18, 19, 20, and 21, range 23, in South Dakota, and giving townships 129 and 130, ranges 83 and 84, in North Dakota, in lieu thereof, which petition, containing 212 signatures, is also transmitted herewith (Exhibit No. 6), being 522 of the 973 male adult Indians of that reservation who have signified their willingness to have certain of their surplus lands opened to settlement, a majority of 70.

In this connection I desire to state that the Indians who signed this last-mentioned petition all reside along Grand River and its tributaries, and

in order to save the townships adjoining their homes for stock ranges, they decided upon substituting a similar number of townships in North Dakota without consulting the Indians of the Cannon Ball district, whose interests were more seriously affected thereby.

The opening of the tracts as outlined in blue pencil on the inclosed map would segregate the Standing Rock and Cheyenne River reservations by opening a strip 18 miles in width between them, and give to each of said agencies legal subdivision outboundaries and compact diminished reservations, ample for the needs of the Indians of the respective reservations, and I am strongly of the opinion that the lines thus suggested would be for the ultimate best interests of the Indians.

After concluding my work at the Standing Rock Reservation, as above set forth, I proceeded to the Cheyenne River Reservation, where I expected to find all the leading Indians of the

reservation assembled to meet me, I having notified Superintendent Rastall to that effect some days previous, but was greatly disappointed upon my arrival at finding only 63 Indians at the agency. Upon inquiry I learned that owing to the breaking up of the ice in the streams and the bad condition of the roads, it was with considerable difficulty that even this number was present.

I reached the Cheyenne River Agency on the 15th instant and convened council on the 16th instant, with, as above stated, 63 Indians in attendance, at which council I explained the said Senate and House bills with reference to opening the surplus lands of the Cheyenne River Reservation, as shown by the minutes of the council, transmitted herewith (Exhibit no. 2), and it will be seen from said minutes--page 17 to 24, inclusive--that the Indians realized it would be advisable for them to consent to the opening of a portion of their surplus lands with the hope of thereby securing a diminished reservation.

During the time our council was in session at the agency a council was also being held at the Cherry Creek substation, 90 miles southwest of the agency, and H.N. Crouse, farmer in charge of that station, phoned to me that afternoon (the 16th instant) that the Indians of the Cherry Creek district, then in council, had decided by a vote of 39 to 19--being 2 to 1--to relinquish a part of their reservation, and that 27 had voted to have the cession embrace the northern part of the reservation, and 20 voted to have the cession taken from the west and north in about equal quantities. The general sentiment of the Indians in council with me at the agency was in favor of the relinquishment of a tract on the west and a strip along the north of their reservation, which was in line with the expressed views of the Standing Rock Indians.

The Cheyenne River Indians also desired annual payments from the proceeds of their sale of the relinquished lands instead of having the

money deposited in the United States Treasury to draw interest at 3 per cent per annum for a period of ten years, as provided in said bills, and also demanded $2.50 per acre for sections 16 and 36 of each township of the cession reserved for the use of the common schools in the State of South Dakota, in view of which demand I assured them that I would make a similar recommendation in this respect as promised to the Standing Rock Indians.

Just previous to the close of the Cheyenne River council James Crowfeather, president of the Indian council, requested that I defer submitting my report of the Cheyenne River Reservation for a few days in order that the Indians of the entire reservation might be enabled to assemble at some point for conference regarding the matter, and that they would forward me a paper reporting the result of such conference, which would reach me at Washington on or before Saturday, the 28th instant, but up to the present time I have not

received the same, and have therefore concluded to submit my report as herein set forth.

In conclusion, I desire to state, as my belief, that the opening to settlement of the tracts of the respective reservations, as herein suggested, will result beneficially to the Indians and be acquiesced in by them, and I therefore respectfully recommend the opening of the lands in the said reservation lying west of the line dividing ranges 23 and 24, in South Dakota, and ranges 84 and 85 in North Dakota, together with townships 16, 17, and 18, ranges 24, 25, 26, 27, 28, 29, 30, and 31, in South Dakota, as indicated in blue pencil on the inclosed map.

Very respectfully, your obedient servant,

James McLaughlin,
United States Indian Inspector
The Secretary of the Interior.

EXHIBIT No. 1.

Proceedings of a council held at the Standing Rock Agency, Fort Yates, N. Dak., by James

McLaughlin, U.S. Indian Inspector, with the Indians of the Standing Rock Reservation, in the States of North and South Dakota, for the purpose of obtaining an expression of the views of said Indians with reference to the opening of their surplus lands to settlement as contemplated by Senate bill 1385 and House bill 17825, Sixtieth Congress, first session.

Council convened on Monday, March 9, 1908, at 1 o'clock p.m., with Indian Agent Belden, Agency Clerk Randolph, and 130 male adult Indians, leading men of the reservation, in attendance, with Antoine De Rockbrain, Charles McLaughlin, and Robert High Eagle, interpreters.

Indian AGENT BELDEN. Friends, will you please come to order. We have with us to-day Colonel McLaughlin who needs no introduction to you, he is here as a representative of the honorable Secretary of the Interior and will present to you a matter of very vital importance to each and every one of you. The Secretary has asked

the Congressional committee as a special favor that they put this to you, that you may understand and have some voice in the action that will be taken. Colonel McLaughlin will now state to you his object in meeting you and I hope you will give the matter your undivided attention.

INSPECTOR MCLAUGHLIN. My friends, I am glad to see such a representative gathering of the leading men of the reservation, and am pleased to meet you. I know that the heavy roads and long distances many of you have traveled in reaching here has been something of a hardship, but the matter which I have to submit and explain to you is one in which every person of this reservation is interested, and I am much pleased to have so many of you present.

You have been assembled here to-day to meet me in council, and as I am well known to all of you I shall proceed at once to state the object of my visit to your agency at this time.

I have been sent here by the Secretary of the Interior to explain to you certain pending legislation which contemplates the opening of the surplus lands of your reservation to settlement after allotments shall have been made to all persons entitled thereto.

There was a bill introduced in the U.S. Senate by Senator Gamble, of South Dakota, on December 9 last, about three months ago, providing for the opening of that part of your reservation embraced in Schnaase County, South Dakota, and another bill introduced in the House of Representatives by Congressman Marshall, of North Dakota, on February 22 last, only sixteen (16) days ago, the Marshall bill providing for the opening to settlement of all surplus lands in the Standing Rock Reservation. The words "surplus lands" referred to in these bills means all lands of your reservation remaining after allotments have been completed to the Indians entitle thereto.

I have copies of the two said bills here with me which I will read and explain to you presently, but before doing so I wish to advise you regarding a certain decision of the United States Supreme Court, which has a direct bearing on the questions involved in the proposed legislation.

In considering the question which I will submit you must bear in mind that the law vests in Congress the right to open Indian reservations to settlement without obtaining the consent of the occupants or without even consulting them regarding same. This was fully determined by a decision of the Supreme Court of the United States in which is known as the Lone Wolf case in a decision handed down by that court on January 5, 1903, five years ago last January.

Lone Wolf, who is a Kiowa Indian, of Oklahoma, whom I know very well, objected to certain Congressional legislation affecting the lands of the Kiowa and Comanche reservation, and, acting for himself and certain of his people,

brought suit against the Government to prevent the opening of their reservation. The case was ultimately carried to the Supreme Court, which is the court of last resort, there being no appeal from its decision, and the decision that court was in substance that Indians are wards of the Government; that the Government is guardian of the Indians; that a guardian has the right to do that which he deems best for the ward, therefore, that Congress has the right to open Indian reservations by legislation without obtaining consent of the Indians occupying it or without consulting them relative thereto.

This is the situation, my friends, as to the power of Congress to open the surplus lands of Indian reservations, but it is the desire of the Secretary of the Interior and Commissioner of Indian Affairs that Indians be consulted and their views ascertained before legislation for the opening of any of their surplus lands is enacted, and

that is why I am now here to confer with you relative to this proposed legislation. I am not submitting this question to you of my own volition, but have been sent here by the Secretary of the Interior and directed by him to be governed in the premises by instructions prepared in the Office of Indian Affairs.

I will now proceed to read and explain these two bills referred to.

(Inspector McLaughlin here reads and explains Senate bill 1385 and House bill 17825, Sixtieth Congress, first session, which consumed one and one-half hours.)

INSPECTOR MCLAUGHLIN. I have now read and explained the two bills affecting your reservation and the question is before you for consideration, and I desire an expression of your views regarding them.

You need have no hesitancy in speaking your minds freely to me regarding this matter. I

am here not only as the representative of the Government in this conference, but also as your friend, and I shall endeavor to make every phase of the question so clear to you that you can not fail to understand it.

I have been sent here to ascertain your views regarding the legislation which is now pending before Congress, but which will not be further acted upon until my report from this reservation has reached the Department. You should consider the several provisions of these two bills, in a business-like manner, and meet the wishes of Congress commendably by determining upon how much of your reservation you are willing to relinquish, also, as to the method of its disposal and manner of payment, but the conditions of its sale and manner of payment must be in accordance with the general provisions of the said bills.

While Congress has the power under the law to open all of your surplus lands, should you

meet the situation reasonably with some proposition that would be favored by the Secretary of the Interior and Commissioner of Indian Affairs, something that would justify their submitting it to Congress with their recommendation that it be adopted as a modification of these two bills incorporated in one bill, I am reasonably certain that it would be acceptable to Congress, and a diminished reservation might thus be secured to you.

My friends, as I have before stated, I am not here of my own volition, but sent here by my superiors to present this matter to you and explain it clearly, so that you may understand what is contemplated by these bills which have been introduced in Congress and which are liable to become a law during the present session of that body unless you meet the question with some reasonable proposition that may meet with Departmental approval and be acceptable to Congress.

I know how dear reservations are held by the respective Indian tribes occupying them and

how they wish to hold them intact. This is but natural, and were it in my power to have them undisturbed as they now exist I would cheerfully cooperate in having them remain so, did I deem it best for the Indians; but that is impossible, my friends. Large reservations were possible in the past, when there was what was called a frontier. That was when the greater portion of the population of this country lived east of the Mississippi River; but the immense immigration coming to the United States from European countries forced home seekers to press westward from the east, and later pressing eastward from the west resulted in the obliteration of the so-called frontier.

There is no more frontier where settlers may find homes readily, and the steadily increasing population demands additional land as homes for incoming settlers. The demand for land by home seekers is now so great that Congressmen are being constantly urged by their constituents to

open more lands to settlement, and the sentiment in Congress to open the surplus lands of Indian reservations has been growing stronger each succeeding year for several years past, until now the sentiment prevails that Indians may only retain what land they actually need and can make proper use of.

Anticipating what is likely to be brought about in this respect, the Secretary of the Interior and Commissioner of Indian Affairs are exceedingly desirous in protecting the Indians and to obtain for them the best terms possible for their surplus lands in the legislation enacted by Congress for their opening.

In the past I favored Indian reservations being held intact, but from observation I have changed my mind as to that and now believe that it will be manifestly better for the Indians to have their surplus lands opened, as it brings in white settlers among them, from whom the Indians

may more readily acquire the white man's civilization and industrious habits, and it also provides a better market for the products raised by the Indians.

To meet this question you must prepare for it by consenting to some compromise between these two bills, such as may be accepted as a modification of the more drastic measure contemplated by the Marshall bill, which would open all of the surplus lands of your reservation after allotments were completed.

You have a very large reservation, certainly much greater than you need and much greater than you will be privileged to hold, and I now wish to hear from you regarding the matter which I have so carefully explained.

Should you wish to confer among yourselves before discussing the matter with me, we will adjourn for a time that you may consider the proposition among yourselves and I leave this for you to decide. I am here for this purpose, and

for this purpose only, and you are privileged to express yourselves now regarding the matter or adjourn for a time.

I have explained the proposition very thoroughly, and you are doubtless ready to express yourselves as to what changes, if any, you would wish made in any provision of the bills which I have read.

I desire to meet your wishes, and although my time here is limited I will not hurry you, and it is for you to decide as to whether we shall take a recess now or you proceed to express your views on the question submitted.

JOHN GRASS. The inspector has told us some things which are very clear to us. On that account we will hold a council this evening and will consider these two propositions. To make all clear, we will consider it. By doing so we will be able to give more thoughtful answers to the propositions, which we will give to-morrow. I am

pleased with what the inspector has said, and I think that everything that he has told us is satisfactory to everybody.

INSPECTOR MCLAUGHLIN. I am very much pleased with John Grass's remarks, and think it a wise conclusion. I am not here to urge you to do that which is displeasing to you nor to influence you to do other than what I fully believe to be for your best interests. If I can give you any advice or information, I am here for that purpose, and don't hesitate to call upon me at any time up until midnight, and I will come to your council and answer any questions you may wish to have made clear. I will leave you the two bills which I have read, also some documents, which may be of assistance in your deliberations. Every word that we have said here to-day will be typewritten to-night, so that you can have a copy before our council to-morrow. I will say for your information that it will be useless to confine yourselves to the Gamble bill, because it will not

meet the wishes of Congress, as I have a letter here from Senator Gamble himself with reference to it. I also met Senator Hansbrough in St. Paul and they, both of said Senators, now want a larger tract of land than is provided for in the Gamble bill. There is also a letter of Senator Gamble's attached to my letter of instructions, which I will also give to you in considering this matter. In discussing the matter among yourselves, I would suggest, and in fact urge, that you determine upon something midway between the Gamble bill and the Marshall bill--that is a compromise between the two, and, as stated to you in my first talk, I feel certain that a proposition of that kind will meet the approval of the officials of the Department and be accepted by Congress.

BEARFACE. I would like to say something here, and that is that our horses are starving and also the Indians, and we want to know what the agent has to say about it.

AGENT BELDEN. I will furnish some hay for the horses and rations for those in attendance at the council to-night.

INSPECTOR MCLAUGHLIN. It is now 4 o'clock and the council is adjourned to meet at 8 o'clock to-morrow morning.

At the request of the Indians the council was not convened until 3:45 p.m., March 10.

Inspector McLaughlin called the council to order.

The council is now convened for the business for which it was assembled, and I am ready to hear what you have to say in regard to the question submitted to you yesterday.

ARTHUR TIBBETS. I am one of the number who has been honored with the appointment of speaking before you. You have been with us in the past and if anyone has been connected with the elevation of these Indians toward civilization, it is you. You have guided us in the footsteps of civilization by starting at the bottom of the

ladder and working up, and we are well pleased with it. You have been instructed by the Department, the Commissioner, and the Secretary, to come before us with this proposition.

We are very much pleased that you have come to us and honored us with the privilege of talking this matter over and giving us a chance to use our voice. We are very much pleased with the action you have taken and it is beyond words to express our thanks to you for what you have done. You explained the two bills yesterday and gave us our choice as to one or the other of them, or between the two as a proposition. We have carefully weighed the two propositions that you laid before us. We have weighed carefully all your statements and your talk even to the very smallest word. We have considered the matter as affecting us and our children in the future. I want to tell you the first proposition that we want to make. In considering the two bills you have put before us, we give you now our opinion and

what we would like. The bill of Senator Gamble seems to call for one county in South Dakota of the Standing Rock Reservation. Congressman Marshall's bill calls for all the vacant land on the Standing Rock Reservation in North and South Dakota.

We have decided here in council to draw a line showing the land we are willing to cede. We have decided to give up 29 townships. That is what was considered and finished last night.

Since that time our agent has brought a map here and showed us an addition to that. It was our intention to comply to some extent in regard to both these bills. It seems that you desire a great deal more land than we have already decided we want to give up, and the reasons for that I will state.

In the first place, the reason why we should not comply with the full request is this. The land seems to be very valuable. Even though a

person would own one foot of land, they would value it to a considerable extent. The land which we own on the Standing Rock Reservation is very good and fertile land. It is true that it is good land, because the railroad companies are now planning to build two or three roads through the reservation; one road is now completed and running through. The reason we feel we should not spare all the land the bill calls for is because if we keep our land for a little while longer we will realize much more for it than if we sell it at the present time. This is what we have decided and we hope that you will comply with what we have decided is for our best interests. What I wish to impress upon your mind is that we are willing to spare the 29 townships in North and South Dakota in the western part of our reservation.

The second proposition is this: It is the usual thing that when land is opened for settlement sections 16 and 36 are reserved. We understand from the price, and what has been

said before, that the price is rather low. We understand that it is $1.25 an acre. As I have already stated, the land is more valuable now than in the past, and we think $1.25 an acre is too small a price, and we now ask $2.50 an acre for the school land to be set aside for the State.

These are the conclusions of the council which we are now demanding of you.

The third and last point is what I wish to speak of now. At the time you were agent here it appears that the President or the Commissioner set a price on the land and that it would be sold at the price set. Since that time they have laid aside some land for us as allotments. This council demands that only those Indians really belonging to the reservation and living within the reservation should receive allotments. We have looked the matter over carefully and have decided on this point, and we would demand to receive $10 per acre for the land in the tract we have

consented to relinquish. I have already stated the reasons why we should demand $10 per acre for it.

THOMAS FROSTED. We have gathered together here for the purpose of counciling with you. Inspector McLaughlin, and also our agent. It appears that Congress has decided upon things which they think would be for our best interests, and we have considered the matter and wish to state what we think would be best for ourselves. Going back to the time when you were agent, we were a powerful nation, but have been gradually reduced in numbers since that time. At that time we were asked to relinquish some of our land, stating that it would be for our best interest to do so. As we have thought of the bargains we made in the past and of the question before us now, we are considering whether it is for our own good or not to accept the proposition now laid beofre us. At the time of our agreement of

1889 it was decided that $3,200,000 should be placed to our credit and we should receive the interest thereon in per capita payments, and we have never received any particular benefit from it. Since that time a great many have died and passed away without receiving any particular benefit from it. We were told at that time that at the expiration of 25 years we would receive the full benefit of $3,000,000. That may be true, but many are now dead and gone. I wonder if they will resurrect the dead and pay them. In consideration of what has been done and what is about to be done we have decided at this time that we should relinquish 29 townships, and if we are going to receive any benefits from the sale of this land, we want it in a way that it will be of some benefit to us. We don't want to put the money from the sale of this tract at interest and draw per capita payments; that is not our intention. We have learned that white people are very happy

when they have money in their pockets and are jingling it, and we feel the same way and we want the same thing. We want to receive the money as it is paid into the Treasury every year. As we have now had some experience and know what money is, we believe we can make good use of it if it is paid to us and not put out on interest.

The second proposition is as follows: We are just at that stage where we know a little more than we did in the past. There are probably 10 men on this reservation, including mixed bloods, who are pretty well posted on this proposition. We understand you to say that three people would be chosen to appraise the land, and that there would be three commissioners, one of whom to be from this reservation, and we have decided that a resident member of this reservation shall be chosen as a member of this committee. We don't refer to a white man married to an Indian woman, but desire a resident of the reservation--a member of the tribe.

And we have also decided that at the time this appraising is to be put in force we would like to choose this member ourselves. The reason for this is because we will choose someone acquainted with the reservation, who has seen the good places and bad places of the reservation.

The third proposition is: The benefits from the sales of land as a usual thing in the past have gone to some people who are not entitled to it, and it is our intention to make a little change in this, in this agreement to relinquish the land that we are here for. We realize that at the time of the previous sale of this land, for which we received $3,000,000, there seemed to be six reservations included in the proposition, and since that time we have suffered considerably by reason of a number of Indians who were entitled to rights here. Our land is now simmered down to a very small portion and we have not much to spare, but the benefits of what we are now going

to spare should be paid to the members of this reservation and living within the reservation. We thought we knew what we were doing at the time, but the Santees were regular rats and they worked their game slick. From this on we have decided that those people have no rights on the reservation and not entitled to any benefits. There are some people who claim rights on the reservation that we have never heard or seen. We refer to the Harmons and the Kemptons. We don't know who these people are, but whenever there is a per capita payment money is always sent to them. It is our intention to discontinue the claim of those people, as they have no rights on the reservation. The residents of the reservation are the people who live here and who have the intention of dying here; those are the people who should get the benefits from the sale of the land that we wish to relinquish. Those are the three propositions I wished to speak of.

ANTOINE DEROCKBRAIN. Inspector, I have a few words I wish to say to you in regard to the council we held last night and to-day. You placed two bills before us for our consideration and asked us what we thought of the two bills presented to us. Senator Gamble's and Congressman Marshall's bills I refer to. In considering the two bills we have decided to take parts of both bills. That is what I am going to speak of. We have decided that we would relinquish 29 townships. There are about five townships in North Dakota and the balance in South Dakota. We have drawn a red line on the map, the land within which we propose to relinquish. It is between ranges 21 and 22 in South Dakota and between ranges 86 and 87 in North Dakota. In considering the two bills you brought before us we have decided to relinquish the 29 townships already referred to and the balance of the reservation left to us we desire to hold in common for our own benefit for the purpose of grazing land

to run cattle and horses on. It seems that all we have to look forward to for our future benefits is the stock industry, and it is possible that we should have a little spare grazing land to support them, and the land allotted to us is not sufficient to maintain the number of stock we have, and we should have a little surplus land which our stock can feed upon. As this is not an agricultural country we will have to resort to stock raising for our living and should have more land than the allowance allotted to us.

In regard to the proposition of Congressman Marshall, that we throw open all the surplus land, we are unable to comply with it. With the stock we have at present, and what we are going to receive the coming season, and the prospects of our children in the future--and as we understand the wives of Indians are going to receive additional allotments of land, we will not have any too much spare land, and therefore the surplus land that we are going to hold aside from what we

now propose to relinquish is not any more than enough for the Indians of the Standing Rock Reservation. It is hard for us to relinquish any more, and we desire that the unoccupied land that we are going to hold that we will be permitted to hold it in common for at least 10 years more and that Congress and the Commissioner will support us in this wish. That is the understanding of the council here assembled, that we are to relinquish the 29 townships already mentioned, and not any more, owing to the facts I have already mentioned. With regard to the proposition that sections 16 and 36 be set aside for school purposes, we should receive $2.50 an acre for same. We understand that these school lands will be for the benefit of the Indians as well as the whites in the future, as some of the Indian children may attend them, but at the same time $1.25 an acre seems a very small price, and we would therefore ask you to allow us the $2.50 per

acre for it. The Flandreau Sioux and also the Kemptons and Harmons are not to be included in the benefits of this sale that we are now talking about; that is what we have also concluded. No one except those who are actual members of this reservation should be entitled to any of the benefits of the sales of this land. We also request the privilege of choosing one of the committeemen to appraise the land, and we should have the right of choosing as such member one who is an actual resident of the reservation.

JOHN GRASS. Well, Inspector, whenever you come here you are apparently one of our number, and whenever we see you it makes us very glad. We know the reason you come, and we know you come to take a piece of our land away, and sometimes it worries us a great deal. I am one of the number chosen to lay before you what the council has decided last night, but these young men who can read and write have apparently laid everything before you. The amount of

land that we have left, after relinquishing that now agreed upon, we don't want to disturb any more; we want to leave that, and we don't want to hear you say that what we have agreed upon is not enough. You may think that as we are willing to relinquish a certain piece of ground that it seemed so easy to you that you would come after us for a little more, but in this particular instance don't ask for any more; we have given you all we can spare. We have reserved a little unoccupied land, but the reason for that is because we are growing in wealth and stock, and the prospects are that some more land is going to be given to the wives of Indians; thus we would want more land, and also taking into consideration the prospects of our children in the future, we can not spare any more, and we want this to be left to us at least for some time. The small portion of unoccupied land now left to us is, we think, no more than we can be benefited by.

Now, we have thought the matter over and have given up all the land we can possibly spare, but it seems you white people claim to know what is best for us, and you go a little further. The Department has chosen for us the stock industry, and they have given us a great deal of stock, which we can show upon the reservation at the present time,and they do this because they want us to advance. They do not want us to go back and be poor, and the land we will have left is no more than we will need for the stock we have now, and we don't think it the right thing to take away any more land and tell us it is for our best interests.

It is the usual thing with the white people, when they make laws to make laws for their own benefit, but these laws are sometimes changed according to the growth of the country or benefits of the people. We know that $1.25 per acre is what is supposed to be paid for the school sections. We want to do like the white people

and make a little change from $1.25 per acre to $2.50 per acre for the school sections, as we understand that white people make changes according to their own benefits and we wish to do the same. In the past the people who have realized the most from the interest money have been the employees called farmers. We have had a great many additional farmers and it appears that the money was spent for that purpose, and I wonder if the interest on this money will be used the same again. And for the reason already mentioned we prefer that the money paid for these surplus lands be paid to the Indians directly each year as it is paid into the Treasury and not put out at interest. There are people living off the reservation and unknown to us, who simply write in here and tell the agent that there is a child born to them and on every payment they send money out to them. We don't

know anything about these people, and we have decided that they must not participate hereafter. I could refer to one instance here--Louis Primeau's daughter. She has reported a birth in her family, and without seeing the child the money was sent to her. In connection with the land we are going to relinquish, I wish to ask a question in regard to the manner in which the coal lands are going to be appraised. We understood you to say that was not to be bought; is that right? (Explained by Inspector McLaughlin.)

It is certainly a fact that the Department depends a great deal on you; you are sent here for all big purposes, and now we are also depending on you a great deal. We have laid our proposition before you and want you to work for us the same as you do for the Department. If our agent is going to make a trip to Washington, we have a great deal to say to him before he goes--we depend a great deal upon him. We forgot to mention that, and that is why I got up

again. Our agent has always done a great deal for us, and if he goes there we look forward that he will help us a great deal.

INSPECTOR MCLAUGHLIN. I am very glad to hear you express yourselves in regard to the business propositions which I submitted to you yesterday, and I am very much pleased with the way you have expressed yourselves regarding the questions. Knowing how dear your reservation lands are to you, and as I also said, if it were in my power to leave your reservation undisturbed I would gladly do so, provided I thought it for your best interests, but, as I explained in my talk yesterday, it is impossible for you to retain such a large tract of land, which is regarded as a barrier to the development of the country.

I will take up the questions in the order in which you have mentioned them. As for the 10 dollars an acre which you demand for the land, I

wish you to understand the question fully and clearly--that Congress will not consider any lump-sum consideration based on a stipulated price per acre on Indian reservation lands in the future, nor will they guarantee to sell your lands only as applied for; that is, they do not guarantee to find purchasers for the land, but simply sell the land, collect the money, and pay it out to you as the bill provides. Congress will not appropriate any money to be used in advanced payments for any lands which had formerly been part of an Indian reservation or any other reservation. Up until about six years ago that was the practice. Commissioners were sent out to negotiate with the Indians, and they would agree to pay a lump-sum consideration, and Congress would make an appropriation to meet the requirements, but they have now adopted a plan which is very fair for the Indians. All reservation lands that are being opened are appraised by a commission appointed for that purpose, and the

lands sold to the actual settler at the appraised valuation.

In the past all lands, regardless of the class of lands or their valuation, went at the same price. Now they are classified, and the better quality of lands bring the higher price, and they are not appraised in 160-acre tracts but in 40-acre tracts--that is the smallest legal subdivision. There may be one poor 40 in a 260-acre tract, which, in case it was appraised in 160-acre tracts, would lessen the value of the quarter, but by appraising it in 40-acre tracts you get the full value of your land; and that such classification and appraisement may be fair and just to the Indians the commissioners appointed for that purpose are selected, one from the Department at Washington who is entirely disinterested, one to be a citizen of the State in which the land is situated, and the third a member of the tribe whose lands are involved. On your reservation

you have a number of young men whom I would regard as fully competent to hold that position. Therefore you need have no fear, or feel at all uneasy about not getting a fair value for your land under the system provided in the bill. The lines you have drawn, my friends, that is the line dividing ranges 21 and 22, takes in a tier of four townships and a little fraction along with the western boundary, and whilst I admit that it is a very nice concession for you people to fix upon yourselves, I am at the same time fully convinced that it would not meet the wishes of Congress. Your speeches and the contentions offered will appear in the record. The Secretary, the Commissioner, and Congress will see exactly what you have said regarding it.

Now, my friends, as to the lines which I have marked on this map in blue pencil for you to relinquish, if every Indian on this reservation were to receive an allotment within the diminished reservation it would still leave you about 500,000

acres of surplus land, and as there are a great many of your people allotted in the tract that will be ceded, you will therefore have a great many acres of surplus land within your diminished reservation.

The Marshall bill gives you permission to select any lands you may wish in the portion to be ceded, or those who are allotted there may relinquish if they do so desire and come within the diminished reservation. This matter is for yourselves to determine, and you will have at least a year and a half or two years before the reservation will be opened.

Nothing towards the opening of your reservation can be done until allotments to you who are entitled thereto have been completed. Then after the allotments have been completed the commissioners commence the classification and appraisement of the land. The report of the commission has to be sent to the Department,

examined, and approved before any proclamation would be issued for the opening of the lands, and I am therefore quite confident that it would be approximately two years before your reservation would be opened.

You must bear in mind that the diminished reservation, which will be yours to retain, enables all children born to receive allotments so long as you have any surplus lands in your diminished reservation. My friend Thomas Frosted said that after conceding these 29 townships on the west you did not want to be disturbed nor asked for any portion of your diminshed reservation for at least ten years.

In order to meet that desire of yours, the best thing for you to do is to accept the lines which I have indicated in blue pencil on this map. The.e are two reasons why I wish you to accept this.

The first is that in case you retain the two tiers of townships west of the blue line which I

have drawn the white man will say "the Standing Rock Indians have too much land" and would not be satisfied with the amount you have given up at this time, and another effort would soon be made to get more ot it.

The second reason is that I do not believe that Congress would be satisfied with anything less than what is indicated there, and by your people consenting to it it would give the Secretary and the Commissioner something reasonable to go before the committee and advocate its adoption, and you would all feel better yourselves by having been a party to the concession than to have the land taken away from you regardless of your wishes, and I would therefore like to have you concur on that line.

In regard to paying the money to you from year to year instead of having it remain there for ten years as provided for in the bill, I believe that your reasons are well founded, for the

reason that you are now deriving considerable revenue from your pasture leases, which will be discontinued as soon as the reservation is opened, and you will need a reasonable amount of the proceeds from the sale of your lands annually to provide for your family needs. Your agent has spoken to me about the matter and I have prepared a memorandum to meet that question, I think, and shall recommend it strongly in my report and hope to have it incorporated in any legislation that may be enacted in the premises.

The proviso is as follows:

"That the proceeds derived from the sale of said lands shall be expended for the benefit of the Standing Rock Indians, in the discretion of the Secretary of the Interior, upon an application to the Department annually by a majority petition of the said Indians, through the Indian agent in charge of the Standing Rock Reservation and upon his recommendation."

And in order to meet your wishes in regard to the double minimum price for your school lands--that is, $2.50 per acre instead of $1.25--I will recommend the following:

"That sections 16 and 36 of the lands in each township of the tract relinquished shall not be subject to entry, but shall be reserved for the use of the common schools of the States of North and South Dakota, respectively, for the State in which the lands relinquished are situated, and paid for by the United States at two dollars and fifty cents per acre, and in case any of said sections or parts thereof of the land in the tract relinquished are lost to the States aforesaid by reason of the allotment thereof to Indians or otherwise, the governors of the said respective States, with the approval of the Secretary of the Interior, may locate other lands of similar character and equal value not occupied and not exceeding two sections in any one township, which shall be paid for by the United States as

herein provided, in quantity equal to the loss, and such sections shall be made prior to the opening of such lands to settlement.

I wish to call your attention to another matter which I have been directed to advise all Indians of when negotiating with them for lands which will bring annual cash payments to them.

It is with reference to the shares of minors derived from the proceeds of cession of tribal lands. The rule obtained until about three years ago that when payments of cash annuities were made to Indians the parents of the minors received the share of their minor children, but during the past three years in all payments of that kind the shares of minors are deposited in the U.S. Treasury and retained there until the minor reaches the age of 18 years, at which time the money thus deposited is paid to them. While this money belonging to minors is in the Treasury it draws three per cent interest, which interest may be paid annually to the parent or person having charge of the minor.

Every State in the Union has a law requiring the money belonging to a minor to be cared for until the child becomes of legal age, which is 21 years in most States, while the Indian Office has fixed the age at which the Indian children attain their majority for this purpose at 18 years. In this way the minor child's money is not squandered, so that he or she may have something to begin a business career with when they reach manhood or womanhood. This system is wise and benevolent, and the Commissioner of Indian Affairs has adopted a plan by which the parents or guardians may receive the minor's share at all regular per capita cash payments. His plan is to ascertain by careful inquiry if the parent or guardian is capable of conducting their own business affairs wisely, and when satisfied as to their sobriety and competency he has their names placed on what he calls a "roll of honor," which

entitles these roll-of-honor members to all privileges which would be enjoyed by a white man of good reputation and business ability.

You will understand from this that each and all of you have the opportunity to have yourselves placed on this roll of honor and thus be privileged to handle the money of your minor children or minor wards.

The roll of honor at Rosebud Agency now contains the names of nearly one hundred families who are enjoying the privileges of white citizens of the community.

I want you to come up here to look at the map, so that you may consider the question further and give me your answer after supper. What you have said, my friends, appears in the minutes of the council and will go forward with my report. I feel very confident that Congress will not accept the 29 townships. The tract of your reservation desired would run along the line

dividing ranges 23 and 24 from the southern boundary of your reservation through to the line dividing the States of North and South Dakota, thence west along the boundary line to a line dividing range 84 and 85, through to the Cannonball River, North Dakota, which is the northern boundary of your reservation, and also townships 18, in ranges 24, 25, 26, 27, 28, 29, and 80, this latter being conditioned upon taking two tiers of townships from the Cheyenne River Reservation.

Should Congress be satisfied with one township following the cattle trail through the Cheyenne River Reservation, the Standing Rock Indians then would not relinquish this row of townships along the southern boundary of the reservation. I wish you to consider this until 8 o'clock tonight, and I will then want your answer. Repeating to you again this evening what I said yesterday, I am not only here as a representative of the Government but also as your

friend, and anything I can do to protect your interests I will gladly do, and I promise to do what I can to hold the southern cession to one township in width, and if they will accept one tier of townships on the south, and that lying west of the blue line between ranges 23 and 24, I will have accomplished a great deal more than I thought I could when I started out in this work, and I will promise you that, in case they do not take but one tier of townships in the Cheyenne River Reservation, which will be the cattle trail, I will make a strong effort to prevent anything being taken along the southern part of your reservation east of range 23. But, in case they take two tiers of townships from the Cheyenne River Agency you will have to relinquish one tier of townships in the south; but that will depend upon the opening of two tiers of townships on the norther portion of the Cheyenne River Reservation. By your conceding range 23, it would incline Congress to accept the old cattle trail of

six miles width as a sufficient outlet for a railroad through to the west and also separate the two reservations, which is desirable.

The reason I am speaking to you with such confidence as to being able to hold the suggested diminished reservation is because I feel that I will have the Secretary and the Commissioner with me in the matter when I submit my report, providing this blue line is adopted. It would be so much better for you to concur in this inner line than to have it taken from you anyway, which I feel quite sure Congress will do, and it will be a great satisfaction to you to be a party to the agreement instead of having it taken from you. It is only a matter of two rows of townships more than you propose and it leaves you ample surplus lands for all the stock you will ever possess.

There is another thing I want you to understand. So long as you have leased pastures, the general sentiment throughout the country will be

that you have lands to spare--more than you need--but when you have no more than you need you are not likely to be further troubled, even should some of your grass be going to waste.

As figured by your agent to-day the interest on the proceeds of this cession would be double the lease money you are now receiving.

You may not wish to recede from the decision you have made, and I would suggest that you leave it to the discretion of the Secretary and the Commissioner of Indian Affairs to determine the question. If they feel that they can satisfy Congress with the line you suggest, well and good, but in case they find it necessary and believe it to your best interest to adopt this bue line, leave it to them.

In talking to you I feel that I am talking to my own family, and I state as my judgment that this blue line is the line that should be adopted for your best interest and protection, because by it you will have a diminished reservation that will

in all probability remain undisturbed for many years to come, while if you refuse to give up these two additional tiers of townships it will only be a year or so before you will be forced to dispose of more.

Where this suggested line strikes the Cannonball is about as far above the Porcupine station as it is from here to Battle Creek, just about 8 miles, and it is 6 miles in a direct line, as the crow flies, west of the Bullhead station, which is about as far as from here to where the telegraph line used to cross the Missouri River south of here, down at the point below where Mrs McCarthy used to live, that is about 6 miles, and you will have all the country east of that line clear through to your southern boundary and north along the same line through to the Cannonball River, to a point fully 8 miles west of the Porcupine station.

The question before you is, Are you willing to leave this matter with the Secretary of the Interior and Commissioner of Indian Affairs to determine and do the best they can for you, or do you still adhere to your former decision?

This is what I wish you to decide upon. I would like to have a vote on this question after you have considered it. I have said all that I deem necessary.

THOMAS FROSTED. I would like to say something. There is something mentioned in one of these former treaties, in the 12th article of the agreement of 1889. [Reads the article.] According to what I have just read, some points could be made bearing on this subject, and quite readily, but since this matter had been decided upon last night we don't feel that we are in any shape to pass upon this subject.

It makes no difference how wise we are or how wise our statements would be, the Members of Congress know what they are about, and on

that account much cowardice has been displayed by us. There is great danger in the way we have agreed to relinquish a portion of our reservation, which differs from the way Congress desires and now, while we have the opportunity, let us try to meet the two propositions halfway. The decision will be with Congress anyhow, and while we have a chance it would be a good thing for us to consider some way in which we may compromise the two bills.

It would be worth while for us to come to some satisfactory agreement whereby we can save a larger portion of our reservation, and in doing this we must try and consider what is desired by Congress.

Last night this question was discussed here, but a good many of us were absent, and when the matter was taken up again in the council to-day there was hardly enough time to discuss it to make it clear to everybody. We did not fully

understand what it meant, but I say now that we should accept the lines desired by the Government.

Of course, we have made our agreement and it is quite natural that we should want to try and hang onto it, but then it would not do for us to go away without considering the great danger and risk we are running, when a saving of a large portion of the reservation should have due consideration, and for which neglect we might afterwards be sorry. We, the young men, often blame the chiefs and headmen who made the former treaties because there are certain parts which we think are injurious to us. Now, if we are to overlook any kind of a serious proposition in this agreement before us, and should afterwards discover that we had left out something that we should have considered carefully, we would be doing the same thing that we have blamed others for--that is, not considering the proposition when it was in progress.

If we were to take one step toward the line proposed by the Congressional committee we would be better satisfied and not sorry for the step we had thus taken. In compromising the two bills that have been laid before us we would feel that we were on a solid basis so as to save a larger portion of our reservation. This is my opinion; of course, you people have your views on the matter.

Inspector McLaughlin reads and explains a portion of the decision in the Lone Wolf case.

INSPECTOR MCLAUGHLIN. There has been a sentiment growing in Congress for serval years past to open all surplus lands to settlement, and it is now the sentiment prevailing in Congress. It is the general belief that Indians should not have any more land than they can make proper use of. And it is that sentiment which is apparent to Commissioner Leupp at the present time and is causing him a great deal of worry.

He has to work constantly to protect the Indians, fearing that Congress will step in and take the surplus lands of reservations and give the Indians nothing for it. Commissioner Leupp's heart is in his work and he has a sincere feeling for the Indian, and to make it possible for him to protect the Indians' interest to the very utmost the Indians must co-operate with him so that he will have something reasonable to go before Congress with, and say "I demand this as a right for these people," and he will then be able to get a sufficient number of Congressmen to aid him.

At the Flathead and Blackfeet agencies the Indians have been alloted and their surplus lands are now being appraised and as soon as the appraisement is completed these reservations will be opened, and that has been done without the consent of the Indians. That is why I am very much pleased with the speech of Thomas Frosted, and with the view he takes in his closing remarks, and I hope you will all come to see this question as he does.

If this bill was depriving you of lands that you really needed it would be a different question, but it will leave you as large a reservation as you will need for your stock and give you allotments for all your children who are born for several years to come, and I feel as confident as that I am standing here, that by going before the committees of Congress with the recommendation and support of the Secretary of the Interior and the Commissioner of Indian Affairs it will be accepted and leave you your diminished reservation intact.

ANTOINE DEROCKBRAIN. The inspector is listening to our reconsideration of the proposition laid before us, and I have listened to what the inspector has said. The inspector brought some bills here, and we have considered them to see if we could not agree upon some portion of land that

we could spare, and we have agreed to that already; we have concluded that we could spare 29 townships, and the Indians have considered this very carefully, and the Indians have decided upon it, and at present that is all they can spare.

I am one of the four men appointed by the Indians to give you our answer, and I consider it my duty to say nothing outside of what has been decided upon by the Indians in council. Unless the Indians at some future time come to some other agreement and fully decide and would appoint me as they did to-day, I would not for any reason at all change my ideas about it, but would stick to the decision of the Indians in council. I have been authorized and empowered by the Indians in council to announce their decision, and what I said has been recorded and I do not care to change it at all.

ARTHUR TIBBETTS. You spoke to us yesterday in a manner which is very satisfactory

to us. You presented for our consideration two bills; one of the bills contained a proposition for South Dakota lands and the other was by Congressman Marshall, of North Dakota, to throw open the entire reservation in both North and South Dakota. We have considered these two bills carefully and have taken action on them. You have requested us to consider the question of throwing open a part of our reservation. If we had known the lines drawn on the map there indicating how much land they wanted us to spare before we had decided upon the matter something might have been done towards concurring, but now as we have already told you how much land we wish to dispose of here in council to-day, it is hardly fair for us to withdraw from our statements taken down in writing. Therefore, all I can do at present, as one of the four speakers, is to stand just where the people placed me to interpret their expressions to you. Probably this

matter may come up again in the future and the people might have a chance to talk about it again. The people who voted on this question have most of them left for their homes, and it would not be fair for us to attempt to cancel the votes that this decision was based on.

INSPECTOR MCLAUGHLIN: Your talk and Antoine's has brought something to my mind that I want to explain to you, and show you the absurdity of your position, believing that your decision will not be satisfactory. As you see, Senator Gamble's bill is simply for Schnasse County and your concession does not embrace any land in South Dakota except what is included in the Gamble bill.

Schnasse County runs right up to the North Dakota line, and all you concede outside of Schnasse County is a little strip about five townships in North Dakota, while Senator Hansbrough, from what he said to me, will demand more than that for North Dakota.

I appealed to you very strongly in my talk to make a compromise between the Gamble bill and the Marshall bill. What you have made is a very small concession, because the Gamble bill embraces four tiers of townships in South Dakota, thus you concede five townships in North Dakota in addition thereto. All the concession you make in your so-called compromise between opening your entire reservation under the Marshall bill, or Schnasse County under the Gamble bill, is merely five townships, while the concession that I suggest would give something reasonable to go before Congress with, and enable the Secretary and the Commissioner to make a very strong appeal for you. I feel that I have done my full duty in presenting the matter to you very clearly, but I shall still do everything I can to prevent the line being fixed at any point east of that blue line dividing ranges 23 and 24. Your statements will show that you fixed upon a line

two townships farther west, but I am confident that it will not be accepted. I hope, however, that with your agent's assistance, we may be able to hold to the blue line, and not come any farther east. That is the line dividing ranges 23 and 24. I mention this so that you may prepare yourselves for it, and understand what in all probability will result.

I don't find any fault with the young men whom you selected to speak for your people, but I will suggest just one more proposition.

The minutes of the council will go forward with my report showing what you have been willing to concede, but should that not be acceptable I would wish you to leave the decision as to the line to the Commissioner of Indian Affairs, and your interests will be fully protected. He may be able to have the line you have decided upon accepted, but if he can not do any better I am confident that he will hold out for that blue line and not come east of range 23. I feel deeply

interested in this because I know the sentitment prevailing in North and South Dakota as well as in Congress relative to this, and there is danger that legislation may be enacted which will throw the line even east of what I suggest, but I am in hopes that it can be held on the line dividing ranges 23 and 24. This is all I have to say, my friends.

SIAKA. When the council was in session here to decide what answer should be given you I was not present, and I had in mind what to say in case I was here, but I could not be present, and therefore didn't have anything to say in regard to the decision made by the council, but now I will express myself as to what my personal opinion was at that time.

When I first heard of the bill introduced by Senator Gamble proposing to open Schnasse County, in South Dakota, I had a different opinion, but since I have heard of the bill of

Congressman Marshall, of North Dakota, for throwing open the entire reservation. I fear for the stock of the young people, not for myself personally, what would become of their stock industry. Therefore I thought it would be a good thing to relinquish the land mentioned by Senator Gamble's bill in South Dakota. Of course you have come to a decision here in council in regard to the matter. I think the inspector has given you very good advice on the subject. I believe it would be well to accept the lines he has suggested, as that would give strength to the Secretary to protect us in the future in legislation by Congress. I think if the line that was suggested by the inspector was adopted by the tribe now that it would strengthen the matter very much, and also strengthen the Secretary of the Interior and Commissioner of Indian Affairs, also the inspector and our agent, in helping us to retain the entire diminished reservation. This

was my opinion prior to the decision of the council here, and after I found out that the decision of the council was different from my opinion, and four speakers were chosen to announce the decision, I kept silent. Of course most of the people who were here to-day have gone, but there are a few here yet. They said they were going to gather again to-night, and I thought I would stay and express what I had in my mind personally.

I believe the boundary line suggested by the council will not hold, as the inspector has told us, but the one he has drawn on the map would be the proper one to adopt, and on account of the decision of the council we naturally expect that there will be another proposition before us in the very near future.

In regard to my speech here, I want it to be distinctly understood that I am not trying to tear down what the tribal council decided upon, but this is simply an expression of my private opinion, and I want the young men to remember that

they are likely to have another proposition before them again in the very near future. The boundary line fixed upon by the council here will not stand, and the one now drawn on the map will be brought before us again.

INSPECTOR MCLAUGHLIN. I want to say a few words in reply to Charging Eagle. He has certainly given the matter some thought for the reason that he has discussed it very intelligently. I know well that councils with Indians are like caucuses with white people. In the white men's caucus a few men dominate the entire meeting, and it is the same with an Indian council, the more aggressive dominate and control; those who are timid are passive and allow resolutions to be vetoed and frequently join in the vote against their best judgment. I have that confidence in the Indians of the Standing Rock Agency, and so high is my opinion of their ability that I am satisifed from the expression of the Indians in our council here the past two days that many of

them who were present felt as Charging Eagle has just expressed himself.

Some men, whites as well as Indians, after they have taken a stand dislike very much to recede from the position they have taken, but if a man has given a question sufficient thought to become satisfied that his first view taken of the matter was not correct he is fully justified in changing his mind and so asserting himself.

I wish to compliment Charging Eagle on the manly manner in which he has expressed himself, he being the first to get up and make a speech on that side, although I am confident there are many others who think as he does. He has certainly taken a practical common-sense view of the question for the interests of all you people, and I hope the rest of you will come around to his way of thinking. I, however, deem it unnecessary to continue our council any longer. If you wish to remain here and talk it over among

yourselves and desire to let me know of any change that may be in line with the views expressed by Charging Eagle, I would be very glad to hear from you to-morrow morning. I will not leave until Thursday morning. I had advised the agent at Cheyenne River to have the Indians assembled to meet me Friday morning at 10 o'clock, but will have to telegraph him that I will not be able to meet them until Saturday morning on account of the notes of our councils to be transcribed, and during my stay here you are at liberty, any of you, to express yourselves. Come and see me at any time or come and see your agent in relation to it. Remember, my friends, it must be of your own violition. I don't wish to urge you. I have placed the matter before you as clearly as possible, and knowing as I do that it would be for your best interest and would be appreciated by the officials of the Department upon whom you must rely for securing

a diminished reservation, I would be very much pleased to see you recede from the position you have taken. You need not adopt it, but as I have said, leave it with the Commissioner and Secretary of the Interior to act for your best interests in determining upon the line for the legislation to be enacted.

HIGH BEAR. I suggested here before, and again last night, and this the third time, in favor of the line that the inspector has drawn on the map there, and also Charging Eagle and One Bull and Thomas Frosted. There are four of us who have spoken in favor of the line the inspector has asked us to adopt. Some time ago we had an argument similar to this which caused a war, and we want to cease having wars, and therefore we made peace through a missionary. Of course, I do not wish the reservation to be thrown open against the will of the young people here, and therefore I will request, as my own personal opinion, that the boundary line mentioned by the inspector be adopted.

OTTER ROBE. It is our wish that since the four men whom we have appointed have finished we should go home. We have authorized these four people to represent the minds of the Indians in council. One of them, Thomas Frosted, has changed his mind and had made a speech which is different from the minds of the Indians, which he has no authority from the Indians to do. One of the speakers, John Grass, has gone home, and all the speeches have been noted down by the stenographer, and whatever he had to say on the proposition is down, and all we have to do now is to see that the statements made by the four speakers are forwarded. We can not very well try these propositions over again, for they were decided last night, and that was done once and for all. We agreed to spare only 29 townships and that is all we can spare, and when we consider the number of Indians located within that space of ground, to go over that would be an injury to the Indians.

INSPECTOR MCLAUGHLIN. My friends, I wish to say to you in closing that I am very much pleased with the orderly manner in which our council has been conducted. I am merely here as the representative of the Government to present this matter to you and advise you what I deem for your best interests, and I shall follow that course to the end until I get this matter off my hands, and do everything possible in presenting the matter to my superiors and committees of Congress.

I know how the Indians feel when it comes to parting with any of the reservation lands. They have been accustomed to having a large tract, a regular domain over which to roam, and they very reluctantly bring themselves to consent to anything that will reduce their reservation. My friends, you must prepare for a gradual reduction of your reservation until you eventually have only

your own allotments, and you are favored by having more land than the ordinary homesteader in the West receives.

I am noted throughout the United States among every tribe of Indians for telling them the truth. In all my public talks with Indians I have told them the truth to the letter. I do not build up any false hopes in them, and I therefore wish to you, my friends, that while your decision will go forward from me as you have spoken it. I can assure you that it will not be accepted, and that if the Secretary, the Commissioner, your agent, and myself can succeed in holding your western boundary to the blue line as marked out on this map, dividing ranges 23 and 24, we will have accomplished all that can possibly be hoped for you. I promise you, my friends, that everything I do in this matter will be for your future interest and I shall endeavor to have a diminished reservation secured to you.

I am pleased to have had an opportunity of visiting your reservation again, and meeting you here, and wish I could remain longer and see more of you, but business is pressing, and it is for the good of you people, and the people of the Cheyenne River Reservation that I wish to get back to Washington as soon as possible to lay this matter before my superiors that they may submit it to Congress before further action is taken on these bills.

I was your agent for fourteen years, and I shall always have your best interests at heart, and any time I can render you any service I will cheerfully do it.

I thank you for the courteous treatment you have shown me, and the orderly manner in which our council has been conducted. I shake hands with each and all of you and bid you good bye.

(Council adjourned at 11:10 p.m. sine die.)

I hereby certify that the foregoing thirty-two (32) typewritten pages is a correct transcription of shorthand notes taken by me of council held by James McLaughlin, U.S. Indian inspector, with the Indians of the Standing Rock Agency, North Dakota on March 9 and 10, 1908.

Watson C. Randolph, Agency Clerk.
Standing Rock Agency,
Fort Yates, N.Dak., March 11, 1908.

EXHIBIT NO. 2.

Proceedings of a council held at the Cheyenne River Agency, South Dakota, by James McLaughlin, U.S. Indian inspector, with the Indians of the Cheyenne River Reservation, in the State of South Dakota, for the purpose of obtaining an expression of views of said Indians with reference to the opening of their surplus lands to settlement contemplated by Senate Bill 1385 and House Bill 17884, Sixtieth Congress, first session.

Council convened Monday, March 16, 1908, with Agency Superintendent Rastall. Special Allotting Agent Deets, G. K. Sellers, allotting clerk, and sixty-three Indians in attendance, with Allen Fielder and Harry Woods, interpreters.

SUPERINTENDENT RASTALL. My friends, you have been called here to-day to listen to Colonel McLaughlin whom you all know and who needs no introduction to you. He is here to explain to you a matter which is of great importance to all the Indians on this reservation, and I am sorry that we could not have had more of the people from the outlying districts here to-day. But I hope that each of you will listen and pay strict attention to what Colonel McLaughlin has to say, so that you can tell all those who are not present what transpires here to-day.

Many of you have talked to me about the opening of the reservation, and I have repeatedly told you that it would come sooner or later, but I

am free to admit that it has come sooner than I expected.

While you may have your opinion and I may have my opinion as to the benefit to be derived by you in opening the reservation, yet it has come to a point where, no matter what you and I think, Congress is about to take some action, and the best thing now for the Indians is to make the best bargain possible with the Government for the opening of the land, as will be suggested by Colonel McLaughlin.

I shall be very glad to advise you on any questions which may arise and to help you to arrive at any agreement or provision which you may wish to make with the Government in regard to the opening of the reservation or part of the reservation.

Colonel McLaughlin will now explain to you the law which is now pending in Congress relative to this matter.

INSPECTOR MCLAUGHLIN. My friends, I am pleased to meet you and to see so many representative men of the reservation present. Owing to the spring thaws the roads are in such condition as to make traveling very difficult, and the long distances that some of you have had to come in reaching here has made the journey a tedious one. The breaking up of the streams between Fort Yates and this place caused me a delay of two days in reaching your agency, but I am glad to have reached here safely and to find so many of you awaiting my arrival.

I am well known to all of you, which makes any extended preliminary talk unnecessary, therefore I will proceed at once to state the object of my visit to your agency at this time.

I have been sent here by the Secretary of the Interior to submit and explain to you certain legislation now pending in Congress, which contemplates the opening of the surplus lands of your reservation to settlement after allotments have been made to all persons entitled thereto.

There was a bill introduced in the United States Senate by Senator Gamble, of South Dakota, on December 9 last, a little over three months ago, which provides for the opening of that portion of your reservation embraced in Schnasse County, and another bill was introduced in the House of Representatives by Congressman Hall, of South Dakota, on the 24th of last month, three weeks ago to-day, which latter bill provides for the opening of all of the surplus lands of the Cheyenne River Reservation, the word surplus lands in this instance meaning all of the lands of your reservation remaining unallotted after allotments have been completed to all of those entitled to allotments under existing laws who have not heretofore received such allotments.

I have copies of both of the said bills with me, which I will read and explain to you, but before entering upon an explanation of the pending legislation I desire to advise you of a certain

decision of the United States Supreme Court which has a direct bearing on the question which you are to consider and express your view upon.

In considering the qeustion you must bear in mind that the law vests in Congress the power to open Indian Reservations without obtaining consent of the Indians or without even consulting them regarding it. This was determined by a decision of the Supreme Court of the United States in what is known as the "Lone Wolf case," in a decision handed down by that court on January 5, 1903--five years ago last January.

A Kiowa Indian chief, named Lone Wolf, objected to certain Congressional legislation which opened all of the surplus lands of the Kiowa, Comanche, and Apache reservations to settlement after allotments to Indians belonging thereon had been completed, and, acting for himself and certain other members of his tribe, instituted a suit against the Government enjoining the Secretary of the Interior from proceeding in the

premises. The case was ultimately carried to the Supreme Court, which is the final interpreter of all law and from which decisions there is no appeal, and the decision of that court was in substance: that Indians are wards of the Government; that the Government is the guardian of the Indians; that a guardian has the right to do that which is deemed best for the ward; therefore that Congress has the right to open Indian reservations by legislative enactment without obtaining the consent of the Indians occupying them or without even consulting them thereto.

This is the situation as to the power of Congress to open the surplus lands of Indian reservations, but the Secretary of the Interior and Commissioner of Indain Affairs desire that Indians be consulted and their views ascertained before legislation is concluded for the opening of their reservations, and this is why I am now here, having been sent to confer with you relative to the proposed legislation affecting your reservation.

I will now proceed to read and explain the two bills referred to, both of which are now pending in Congress:

Inspector McLaughlin here reads and explains the provisions of Senate bill 1385 and House bill 17884, Sixtieth Congress, first session, which consumed one and one half hours.)

INSPECTOR MCLAUGHLIN. I have now read and explained the two bills affecting your reservation and the question is before you for consideration and an expression of your views thereon.

You need have no hesitancy in expressing yourselves freely, as I am here not only as the representative of the Government in this instance, but also as your friend, whom you have all known for many years, and I shall endeavor to answer fully and clearly any question bearing upon the matter which you may wish to have further explained.

These bills will not be further acted upon until the report of my conferences here reaches the Department, but I, having been unavoidably delayed in reaching here, time is pressing and you should, therefore, act with reasonable promptness in considering the matter and expressing your views thereon.

I would suggest that you consider the provisions of both these bills carefully and in a businesslike manner. Agree among yourselves upon some compromise measure between the two bills which may receive the approval of the Department and be acceptable to Congress.

Determine upon how much, and what portion, of your reservation you are willing to relinquish; also as to the manner of payment, which, however, must be in accordance with the general provisions of the said bills.

While Congress has the power to open all of the surplus lands of your reservation, as contemplated by the Hall bill, I have the hope that you

may meet the situation in a businesslike manner with some reasonable proposition that would be favored by the Secretary of the Interior and Commissioner of Indian Affairs, which would justify them in submitting it to Congress with their recommendations that it be adopted as a modification of the two bills merged into one, and through which I am reasonably certain that a diminished reservation may be secured to you for many years to come, within which all children born to you for many years would receive allotments.

My friends, I am not here of my own volition, but sent by my superiors to present and explain this matter to you. These bills have been introduced in Congress and legislation embracing their essential features is liable to be enacted during the present session of Congress unless you meet the question in a commendable manner.

I know the sentiment of the Indians regarding their reservations and of their desire to hold

them intact, which is only natural, but for the Indians to hold large tracts of unused land is now impossible, my friends, and you must bring yourselves to accept the inevitable, and rely upon the Department to obtain for you reasonable compensation for the lands you do not need.

Large reservations were possible in the past, but there was then what was known as a frontier.

That was when the principal portion of the population of this country lived east of the Mississippi River, but the tide of emigration from European countries to the United States forced home seekers constantly westward from the east and later on eastward from the west until the two waves met and obliterated the so-called frontier.

There is no more frontier where settlers may find homes readily, and the steadily increasing population of the country demands all available land possible for the incoming settlers. The demand for land for home seekers is now so great

that Senators and Congressman are being constantly urged by their constituents to open additional lands to settlement, and the sentiment in Congress to open Indian reservations has been growing stronger each succeeding year for some years past, until the sentiment now prevails that Indians may only retain what land they actually need and can make proper use of.

I was for many years in favor of leaving the boundaries of Indian reservations undisturbed; but restults of the system have caused me to change my mind relative to same, and I now believe, even if such were possible, that large reservations for Indians, much of which is not occupied by them, is not for the best interests of the Indian occupants. I now believe that it will be manifestly better for the Indians to have their surplus lands opened to settlement, as it brings in white settlers among them from whom the Indians may more readily acquire the white man's civilization and industrious habits, and it insures

a home market for all products raised by the Indians.

To meet the question now before you, a compromise between the two bills, which I have explained is advisable, such as might be accepted as a modification of the Gamble bill and the Hall bill, which latter if enacted into law would open all the surplus lands of your reservation after allotments are complete; and I am quite confident that the Gamble bill will not be enacted as introduced, but will be amended to include a much larger tract of land, as Senator Gamble said to me the day I left Washington on this assignment that he desired the pending legislation to cover a much larger tract, but consistent with the best interests of the Indians.

You have a very large reservation, certainly much greater than you need and much greater than you will be privileged to retain, and I now wish to hear from you regarding the matter which

I have endeavored to place before you very clearly.

It may be well for me to inform you that the Indians of the Standing Rock Reservation have met this question very commendably and I trust that you may see the wisdom of treating it similarly, by which you may feel the satisfaction of having had a voice in the contemplated opening which is sure to come, for which, however, you will be fully compensated through the provisions of the bills, which I have explained, and which method of disposal and manner of payment as provided in said bills would doubtless be incorporated in any modified measure enacted.

Should you wish to confer among yourselves before expressing your views regarding the matter we may adjourn for a time that you may consider the question. I leave this to yourselves to decide.

I am here for this purpose only, and while I am desirous of getting through as soon as possible I do not desire to hurry you and will meet your wishes as to whether you prefer to proceed now or adjourn for a time that you may talk the matter over among yourselves.

JAMES CROW FEATHER. There are more of us people than are here to-day and we have a way of doing business in matters of this kind, which you first started. It is our business council, which you showed us how to do business by, on this reservation. You told us, when any business came up in regard to the lands for all of us to get together, have a chairman, and do it like the white people; that a general council of the Indians should first express their opinion regarding the matter, and they then turn it over to the business council to act upon. Since that time we have been doing business that way and we like the plan, and in view of this system we do not feel that we might express our opinions

just to this assemblage and with only so few here. This matter is of interest to the whole tribe. I am chairman of the business council, and we have rules regarding the matter, and I would like to carry them out. You say that you will let us talk among ourselves. I agree to that. We will talk only on this one thing whether or not we will hold a council.

I would like to have all the people together when we do business regarding land, for heretofore we have done business with them scattered over the reservation, and you know it has done us no good. Since I have been chairman of the council I have always tried to get them together when I can, but in this case it is impossible to get them all here.

INSPECTOR MCLAUGHLIN. I am very much pleased with the remarks of the chairman of your business committee. As I said in the beginning, I would have liked to have had more of the people here, but am pleased to see so many, considering

the condition of the roads and the inclement weather.

The matter which I have presented to-day is a matter you doubtless all have heard of and which had doubtless been discussed among you for some weeks past.

Some of your people have talked to me over the phone from White Horse and Cherry Creek and they would have liked to have been here to-day, but the roads being so bad it was impossible for them to attempt the journey, and it is impossible for me to consume the time that would be necessary for them to get here after the roads become passable. I am desirous of getting the matter before the Department as soon as possible, so that it can be considered and submitted to Congress, and therefore suggested that we adjourn for a time for you to discuss the question among yourselves. I will return at any time to answer any questions which you wish to ask.

In a very short time we will have typewritten copies of all that has been said here to-day, and I will furnish you with a copy of it for reference in your deliberations.

Not wishing to keep you here unnecessarily long, we will now adjourn until seven o'clock, and if you are not ready then we will adjourn until to-morrow morning, but I would like to hear from you this evening.

We will adjourn until such time as you send for me, or until seven o'clock.

(Council here adjourned, at 3.15 p.m., to meet at 7.00 p.m.)

Council reconvened at 7.30 p.m.

INSPECTOR MCLAUGHLIN. We have again met in council and I hope to have some expression from you on the question before you. I wish to say, my friends, that you were specially favored in having a representative of the Department sent out to confer with you relative to the opening of

your reservation with the matter already before Congress.

The Flathead and Blackfoot reservations in Montana, both very large reservations, have been opened to settlement without asking the concurrence of the Indians. Allotments have been recently completed on those reservations and commissions are now engaged in appraising the surplus lands in a similar manner as is provided for your surplus lands.

I was sent to Fort Peck Reservation, Montana, last September, and negotiated with the Indians of that reservation for opening all of their surplus lands after allotments have been completed, exactly as is provided for your reservation. I entered into a regular agreement with them which was ratified by Congress about two months ago.

On the 17th of last month I left Crow Agency, Montana, after having obtained the consent of those Indians to open all their surplus

lands. They had all been allotted except children born the past two years. The bill for opening that reservation was introduced by Senator Dixon, of Montana, and the Indian Commissioner desiring to have the concurrence of the Indians rather than have the reservation opened arbitrarily sent me out there to explain the Dixon bill as I have done with the Gamble and Hall bills here. The Indians desired three changes in the legislation which I believe will be accepted by Congress, and the Indians appreciated the interest taken by the Department in the matter.

The bills introduced for Standing Rock and Cheyenne River reservations by Congressmen from the respective States in which the lands are situated, providing for opening all the surplus land of the reservations will doubtless become a law in a modified form. After I explained the matter to the Standing Rock people very fully they saw the wisdom of meeting the wishes of Congress in a very reasonable manner, by which

I am quite confident that they will have a diminished reservation created, which will remain so for many years, and it will enable them to have allotments for the children born to them for many years to come. It is my desire that you meet the question in the same manner as Standing Rock. You are one people; you are of the same blood; you live under the same treaty and I hope you will meet the matter similarly. I am quite confident that when I submit my Standing Rock Council minutes to the Secretary of the Interior that he and the Commissioner will be very much pleased, and submit it to Congress with recommendation that it be accepted, which would leave the Indians a permanent diminished reservation. As many of the Standing Rock Indians have taken allotments in the portion that will be opened it will leave them about 500,000 acres of surplus land on the diminished reservation; and on this reservation, judging from what I have heard the Indians saying to the alloting agent to-day, in

desiring lands in the parts to be opened, that you will have fully a million acres of vacant lands within the lines I have suggested.

My friends, I appreciate the fact that you are reluctant to act in the premises with so many of your people absent, but considering the weather and the condition of the roads, I regard this as a fair representative gathering. I would now like very much to have an expression from you. Whether favoring the opening or not, let me know the sentiment of this assemblage.

As I said before, I am here not only as a representative of the Government, but as your friend, and you need have no hesitancy in speaking freely to me.

Just one word more. My friends, you will be perfectly safe in allowing the Secretary of the Interior and the Commissioner of Indian Affairs to determine upon the lines for you. You may wish some changes in manner of payment, in which case you should mention them. I am confident

that your requests will be duly considered, else I would not be here in council with you this evening.

JAMES CROW FEATHER. You mentioned Lone Wolf's case in your address here to-day. I wish to say something regarding him. I understand that Lone Wolf refused to sell his land or cede it to the Government, but the Government took it. The way I look at that, the Government did right in selling his land if it was necessary to sell it in order to give him a living. I understand that it was taken to the Supreme Court and that it was decided against him. The Government ought not to take our case like Lone Wolf's case. We are willing to give up part of our reservation, but the Government ought to give us time to consider these matters. The Indians are scattered out over the reservation holding councils and I don't know as you can get anything out of them when they all get together.

I say again as I said to-day that the whole tribe ought to be together in considering this important matter. You were sent here to talk to us and you knew before you came what we were; you know us well. This tribe of Cheyenne River Sioux never refused the Government anything that the Government asked them to do.

As I said before, we may decide one way, perhaps Whitehorse camp another, and Cherry Creek another, and when you get all together I don't see how you can make anything out of it.

I understand that you have little time to spare, as you want to get back to Washington, but I am perfectly sure that the people here will not say anything against opening the lands. What I want is for you to give us time to consider. You can go home if you want to; we will try to do as you ask us to do. We would like to talk over this matter; we can understand it fully and there are a good many here who can't understand it. We would like more time.

INSPECTOR MCLAUGHLIN. One point I know you will be pleased to give expression on and I would very much like to know what is in your minds regarding it, and the reason I mention it is that I have heard it spoken of by the Indians to-day outside of the council--that they do not like the manner of payment provided for in the two bills which I have read to you.

I desire to ascertain the sentiment prevailing here regarding this, because when I reach Washington something may be needed to start in upon at once, and if you leave this matter of payment untouched it is liable to become a law as it is. Therefore I would like to hear your opinions regarding it.

HARRY WOODS. I think that is a matter we ought to consider. Our agent received a letter not long ago asking him to send a list of names of Indians that he thought were able to do their own business as to moneys, etc. I would like to know how this law or bill here would affect that.

MAJOR MCLAUGHLIN. It would not affect that in the least.

HARRY WOODS. I think this ought to be inserted in the bill, for a good many of us are thinking of filing an application to have any money due us paid direct to the Indians. We do not like this matter of being wards of the Government and having everything done for us by the Government. It is the same thing every treaty we make. The Government makes rules and laws to govern us and wants us to become civilized, but when we want to do anything they turn around and say we are still wards. We understood once that when a man took he was a citizen and not a ward. They told us these things and a good many of us liked it, but now they say we are still wards.

The money to be derived from the sale of the land won't be very much and I don't think it would hurt anybody to pay it out to us in full,

and I would like the Secretary to have this inserted in the bill.

INSPECTOR MCLAUGHLIN. That is, you want the money paid annually instead of having it held in trust for ten years?

HARRY WOODS. Yes.

INSPECTOR MCLAUGHLIN. Are you voicing the sentiment of the Indians assembled in this council when you express that desire?

HARRY WOODS. Yes.

INSPECTOR MCLAUGHLIN. I wish you to understand, as most of you doubtless do, that the benefits to be derived from the sale of tribal lands belong to the tribe, every man, woman, and child having an equal share.

The Department has ruled that the shares of minors be placed in the Treasury until the minor becomes eighteen years of age. In most States the age is twenty-one, but the Department has ruled that for this purpose the legal age shall be eighteen years.

At each tribal payment the share of the minor is returned to the Treasury, where it draws three per cent interest. When the minor reaches eighteen years of age he receives the entire amount. During the years of minority all payments of the interest are made to the parent or guardian of the minor. As an incentive to build up manhood in the Indians and teach them to look after their own affairs the Commissioner has fixed upon a plan which enables every parent or guardian to draw money for their minor children or wards. He ascertains by careful inquiry whether the parent or guardian is sober and industrious and capable of handling the money properly. If he is, he pays the money to him. After inquiry, if satisfied that the party is worthy of trust, he places his name on what is known as the "roll of honor." All persons named on the roll of honor handle the money of their minor children or wards.

On the Rosebud Reservation there are about 100 names on the roll of honor, and they receive the regular per capita shares of their minors from the sale of their Gregory County lands.

We never had a Commissioner who has given the Indian question more earnest thought and study than our present Commissioner. You may understand that from the letter which he sent to your agent, as referred to by Harry Woods, asking for a list of those who are able to look after their own affairs, etc.

I am very much pleased with Harry Woods's remarks. It is my desire to see every Indian a citizen just as soon as he can conduct himself as one. Harry Woods's speech will show the Secretary and Commissioner, who will read the minutes of this council, that the Indians are looking forward to becoming independent.

ALLEN FIELDER. You have told us to-day that the members from our State have bills in

Congress to open up a part or all of our reservation. We heard this some time ago. A good many of us have had that thought in mind and we have thought over the matter. I am in favor of opening the reservation and don't think there is any use in our trying to fight it.

I am in favor of opening only part of it; we want to reserve some for the future, a diminished reservation. This matter being now presented to us, what we have to do is to consider what part of the reservation we want to give up. Senator Gamble in his bill says Schnasse County. I might want that part mentioned in Gamble's bill and the "cattle trail" included (the north tier of townships).

The next thing in the bill that we should consider is about the school lands. The price of $1.25 per acre provided in the bill is not satisfactory to me. I understand that the Standing Rock Indians have asked $2.50 per acre for the school

lands, and I agree with them and demand the same price.

As to the sale of our lands, for my part I would want the Government to buy it from us outright, and then let the Government sell it. My reason for this is that we sold some land south of the Cheyenne River and we never got any thing out of it. We got three million dollars placed on deposit in the beginning, and it took all the proceeds of the land to pay the expenses of the sale.

There being so much vacant land I am afraid we will not get very much out of our lands under the present bill, as it will take years for all of the land to be disposed of to settlers.

Section five of Senator Gamble's bill, where it speaks of reserving town sites, I am in favor of. Somewhere in Senator Gamble's bill it mentions reimbursing the Government for what is expended in appraising the land, etc. I am not in favor of that, for if the Government wants our

land, and if the people want it, let them pay for it, otherwise it will take every cent we get out of our lands to pay these expenses. I am in favor of what Harry Woods said about payment of proceeds of sales direct to Indians that are capable of handling their own affairs, i. e., the money to be paid annually.

That is all I have to say.

INSPECTOR MCLAUGHLIN. I wish to explain a matter to you people and shall endeavor to make it clear. It is with reference to Allen Fielder's speech and his reference to the cession of 1889, whereby three million dollars were placed in the Treasury to your credit, to draw 5 per cent interest while there, the interest to be paid annually. The interest on that fund amounts to $150,000 annually, seventy-five thousand of which is paid in cash and seventy-five thousand expended in education. That $3,000,000 fund is still in the Treasury at interest for six agencies,

Santee and Flandreau having been paid in full. You will receive your portion of that fund just the same as the amount due the Santees has been paid to them within the past two years.

As to the sale of the land, you will remember that it provided for $1.25 per acre for all land taken the first three years, seventy-five cents an acre the following two years, fifty cents per acre for the following five years, and all remaining undisposed of at the expiration of ten years from date of opening was to be paid for by the Government at fifty cents per acre. Therefore every acre has been disposed of in so far as you having received credit for it and the same is shown on the books of the Treasury. Allen Fielder's statements were pertinent as to that, it being true that you people have not received anything yet from the proceeds of that land, except your interest in the permanent fund, but all other Sioux reservations have been receiving benefits annually. Every allottee over eighteen

years of age is to receive the benefit of section 17 of that act, which is: A yoke of cattle with yoke and chain, or a pair of American mares and set of harness in lieu thereof; one wagon, two cows, a plow, harrow, shovel, hoe, and fifty dollars in cash.

You must remember that there are a great many Sioux and when every one of them over eighteen years of age receives these benefits it will take a great amount of money, and this is what the money derived from the cession of 1889 has been used for. Each and every one of you will receive what has been provided for by section 17 of that act. It is now believed that when the allotments are complete the money derived from that sale will be exhausted and the Government will be out of pocket in the transaction, for the reason that is has been ruled by the Secretary that the $3,000,000 permanent fund can not be used for that purpose. The sale of that land was entirely different from the manner of payment

provided for the proposed sale of your land. The expenses of sale of your land under these bills will be very little compared to the amount of money you will receive. There are only three commissioners; one of these is to be from the Department, an official of the Indian Bureau; the second is to be a citizen of South Dakota, and the third a member of your tribe. Judging from the demand for land and the way it has increased in value within the past three years, I fully believe that after all expenses are paid for disposal of these lands that you will receive $2,000,000 from the proceeds. I have been reliably informed that the railroad, which is now at Le Beau, will cross the Missouri and run up the Moreau River, which will enhance the value of these lands very materially.

I have been told that along that line of the Milwaukee road running through the Standing Rock Reservation, every quarter section of land within twenty miles of the line of the road, clear

out to the Montana line, has been filed upon. While I was at Oak Creek last Thursday a train went through there in two sections loaded with emigrants and their supplies.

With reference to the Government paying you a lump sum, I wish to assure you that such has not been entertained by Congress for the last seven years. Congress will not accept anything of that kind. I will show you an advantage in this.

In 1901, six years ago last fall, I made an agreement with the Rosebud Indians for the payment of a lump-sum consideration of $1,040,000. Congress rejected it, but provided for another plan which is nearly similar to this of yours, and the Indians have received about $1,800,000 for that tract of 416,000 acres. That act provides that at the expiration of eight years all land not taken by settlers is to be sold to the highest bidder for cash. The sale is made by the register and receiver of the land office, and has to be

paid for as appraised. The register and receiver of the United States land office are Government officers and will be paid by the Government. You get the exact appraised value for every foot of land which is to be opened. The development of this country has been so rapid within the last few years, and there being now very little available land, with the population steadily increasing, the demand will be great. Towns will be built on both this reservation and on Standing Rock Reservation and the Indians will get the benefit of it under the provisions of these bills.

I will say that I am very much pleased with the council we have had, and everything I have said and all that you have said will be typewritten, one copy to go forward with my report, the other to be left with your agent for future reference.

I am aware that you are reluctant to express yourselves as freely as you would if all the people were here, but the weather has been so

unfavorable that they could not get here. I am glad, however, that you have talked as freely as you have. I shall report everything connected with this council and I am confident that your interests will be well guarded by the Secretary and Commissioner of Indian Affairs.

I am going direct to Washington from your agency and my reports will go in the following order: Crow Agency, first; La Point, Wis., second; Standing Rock and your agency will go in practically together. Should anything further occur to you it will be a few days before I reach your report and you can send the paper to me so that I may make it a part of the record and action can be made on it.

I deem it unnecessary to continue the council any longer. I have explained the matter very carefully and fully and I am noted for telling the truth to Indians. I use no honeyed words so that they may not be disappointed.

I remain here all day to-morrow, and if I can not cross the river will be here some days longer until the ice runs out. If there is anything further you wish to bring up I shall be very glad to meet you again to-morrow.

That is all I have to say, and unless there is something that you wish to say, the council will close.

JAMES CROW FEATHER. I understood you to say in your talk to us to-day that you did not want to rush us, and anything done in a hurry is never done right. I could have got up here and expressed my opinion in regard to this matter, but what I want is to have all the tribe agree upon one thing.

INSPECTOR MCLAUGHLIN. In this matter you will be guided by your agent; he is the person to go to when in doubt. He represents the Government. I am very willing to meet your wishes and will hold your papers until two weeks from to-day before handing in my report.

This council is now adjourned.

Council adjourned sine die at 10 o'clock p.m.

I hereby certify that the foregoing nineteen (19) typewritten pages is a correct transcription of shorthand notes taken by me of council held by James McLaughlin, U.S. Indian inspector, with the Indians of Cheyenne River Reservation, South Dakota, on March 16, 1908.

G. K. Sellers, Stenographer,
Cheyenne River Agency,
South Dakota, March 17, 1908.